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**OVERVIEW OF MILITARY REVIEW
BOARD AGENCIES**

HEARING

BEFORE THE

SUBCOMMITTEE ON MILITARY PERSONNEL

OF THE

COMMITTEE ON ARMED SERVICES
HOUSE OF REPRESENTATIVES

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OVERVIEW OF MILITARY REVIEW BOARD AGENCIES

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
SUBCOMMITTEE ON MILITARY PERSONNEL,
Washington, DC, Thursday, March 2, 2017.

The subcommittee met, pursuant to call, at 11:22 a.m., in room 2118, Rayburn House Office Building, Hon. Mike Coffman (chairman of the subcommittee) presiding.

OPENING STATEMENT OF HON. MIKE COFFMAN, A REPRESENTATIVE FROM COLORADO, CHAIRMAN, SUBCOMMITTEE ON MILITARY PERSONNEL

Mr. COFFMAN. The subcommittee hearing is called to order. I want to welcome everyone to the first hearing of the Military Personnel Subcommittee in the 115th Congress. I wish to congratulate the new and returning members of the subcommittee, and particularly congratulate our new ranking member, Congresswoman Jackie Speier, who is not here right now, of California.

I look forward to working with each of you on the important issues facing this subcommittee. The purpose of today's hearing is to receive an overview of the military review board agencies.

The Board for Correction of Military Records and Discharge Review Board provide extraordinarily important services for our service members and veterans. These boards are charged with the difficult mission of correcting errors in, and considering mitigating facts and removing injustices from, our military records.

They receive thousands of applications every year that request everything from name changes on personnel documents to discharge upgrades. Over the past several years, many have raised concerns regarding application processing, backlogs, and the approval rates for discharge upgrades.

Many have also raised concerns about the treatment of applicants with PTSD [post-traumatic stress disorder] or TBI [traumatic brain injury] who are seeking discharge upgrades based on mitigating medical facts in order to obtain essential behavioral health treatment.

Congress has passed substantial legislation designed to help remedy some of these issues, and the services have continued to work to ensure that each applicant receives timely, full, and fair consideration for their case. I look forward to hearing whether these combined efforts have been effective and if any additional legislation may be beneficial.

I am also interested to hear from the witnesses about additional challenges they face in the timely processing of applications and what resources are needed to overcome these challenges.

Finally, I look forward to hearing about ways to improve applicants' access to the boards by leveraging new technologies like video teleconferencing.

Before I introduce our panel, let me offer the ranking member, Ms. Speier—Ms. Tsongas, an opportunity to make her opening remarks.

[The prepared statement of Mr. Coffman can be found in the Appendix on page 27.]

STATEMENT OF HON. NIKI TSONGAS, A REPRESENTATIVE FROM MASSACHUSETTS, SUBCOMMITTEE ON MILITARY PERSONNEL

Ms. TSONGAS. Thank you, Mr. Chairman. Ms. Speier would be here, but an Intelligence Committee briefing had not concluded that she had to stay to see through. And so I am happy to be here in her behalf and read her opening statement.

So thank you, Mr. Chairman, for convening this hearing today, and thank you to our witnesses for your testimony to the subcommittee. I don't envy you as you probably have some of the most difficult jobs in the Pentagon, but also some of the most important.

As the civil servants charged with ensuring that the service of our military members is fairly characterized and accurately reflected in their records, there are long-term consequences of your boards' decisions.

Not only financial consequences, although healthcare and education benefits do often hang in the balance, but more significantly, those decisions have the potential to make our veterans mentally whole and restore dignity and pride to them and their families.

This is particularly true when we consider that only recently have we started to understand the possible behavioral consequences of post-traumatic stress disorder, traumatic brain injury, chronic traumatic encephalopathy, and military sexual trauma.

We must make sure that the boards make every possible effort to take these factors into account when considering a request to upgrade discharge status. We need to ensure that mitigating conditions are taken into account.

All too many service members feel that there is a stigma associated with the PTSD diagnosis and may be hesitant to seek appropriate care and documentation.

All too many military sexual trauma, or MST survivors, an estimated 80 percent, do not report their assault and suffer alone. Worst, many sexual assault survivors who received either an honorable or general discharge are also branded with a diagnosis of, quote, "personality" unquote, or, quote, "adjustment" unquote, disorders on their DD-214 [Certificate of Release or Discharge from Active Duty], when in fact all that has happened is that they were sexually assaulted.

These diagnoses, which have a limited basis in science, make it hard for survivors to find employment in the civilian world. One survivor told me quote, "I feel like I have a scarlet letter on my chest." And while I am speaking here for Ms. Speier, I have certainly heard the same thing.

Equitability is another factor that you all must consider. Thanks to your staffs for providing recent statistics on the rate of discharge

upgrades, but I am struck by some of the disparities I see, not just across services, but also across the different types of claims.

To choose one metric, the evidence required to support MST claims seems to vary widely across services with some requiring formal documentation that a survivor who chose not to report, and remember that is 80 percent of all survivors, may not be able to provide.

There may be valid, underlying reasons for these differences, but I am sure we all agree that supporting survivors is our top priority. I look forward to learning more about the reasoning behind these differences today.

Your jobs are also difficult because your organizations are, frankly, overwhelmed. Your caseload is enormous and the backlogs are stunning. That caseload will only expand.

The President talks about spending billions to increase our military end strength, but that comes with the responsibility to make sure that each and every one of these new service members are taken care of on the back end of their military careers. Part of that task falls to you.

So I hope we have a chance to talk today about what we can do to address that now. Specifically, I would appreciate your views on achieving efficiencies through the consolidation of boards across the services. Thank you again, and I look forward to hearing your testimony.

Mr. COFFMAN. Thank you, Ms. Tsongas. We are joined today by an outstanding panel. We will give each witness the opportunity to present his or her testimony and each member an opportunity to question the witnesses.

We would respectfully remind the witnesses to summarize to the greatest extent possible the high points of your written testimony in 5 minutes or less. Your written comments and statements will be made part of the hearing record. Let me welcome our panel.

Ms. Francine Blackmon, Deputy Assistant Secretary of the Army for Review Boards. Mr. Robert Woods, Assistant General Counsel for the Assistant Secretary of the Navy for Manpower and Reserve Affairs. Mr. Mark Teskey, Director of the Air Force Review Boards Agency.

With that, Ms. Blackmon, you may make your opening statement please.

STATEMENT OF FRANCINE C. BLACKMON, DEPUTY ASSISTANT SECRETARY OF THE ARMY (REVIEW BOARDS)

Ms. BLACKMON. Thank you, sir. Chairman Coffman, ranking member, distinguished members of this committee, I thank you for the opportunity to appear before you on behalf of the Army Review Boards Agency.

The Army Review Boards Agency provides the highest administrative level of review for personnel actions taken at lower levels of the Army. The agency administers 13 boards to include 3 statutory boards, the Board for Correction of Military Records, the Discharge Review Board, and the Grade Determination Review Board. The remaining boards are policy boards.

The Army Review Boards Agency staff consist of 112 civilian employees and 16 soldiers. In addition, 120 employees serve as volun-

teer board members for the Army Board for Correction of Military Records.

These volunteers are senior civilian employees drawn from across the Army secretariat and Army staff. The Army Review Boards Agency administratively reviews and corrects service members' records involving impropriety, inequity, changes in policy and law, and even human error.

The Army Review Board Agency acts in the interest of justice, applying equity and compassion when considering the merits of an individual case. The agency processes approximately 22,000 cases annually.

My vision is for the agency to be adaptable, cohesive, and a collaborative team of highly qualified, responsive, and compassionate professionals. I expect them to be dedicated to customer service, transparency, justice and equity, and to carefully weigh the interests of soldiers, veterans, the Army, and the public. We strive to implement efficient and effective processes with the best technology available.

We recognize that upgrading discharges is one of the most important functions of this agency. The Army has successfully implemented the Secretary of Defense's 2014 guidance to the Board for Correction of Military Records for a request to upgrade a veteran's discharge characterization where PTSD may have been a contributing factor.

In those cases for veterans who claim PTSD, to include those who serve before PTSD was a recognized diagnosis, boards give liberal consideration to evidence of PTSD symptoms in the service record or in a diagnosis provided by civilian providers. Moreover, special consideration is given to a Department of Veteran Affairs diagnosis of PTSD or PTSD-related conditions.

To implement 2015 NDAA [National Defense Authorization Act] requirements to enhance participation of behavioral health professionals on these boards, we have added neurologists, a psychiatrist, and three clinical psychologists to our medical advisor's office. Agency medical professionals provide in-person or written input for board consideration for each of these types of cases.

Another type of invisible wound in which we liberally consider cases are those in which the applicant contends that they were victims of sexual assault while in the military. We recognize that many of these assaults were never reported to military law enforcement, meaning there is no corroborating police report for the board to consider.

Because of this, in the last year, we have trained all agency personnel on the markers of sexual trauma so that victims receive the most favorable possible outcome from their case. This training was provided by a renowned forensic psychologist, and is in addition to the statutory requirement for advisory opinions for the Board for Correction of Military Records and mental health professionals serving on the Discharge Review Board.

We continually look for ways to better serve the soldiers, veterans, and family members who apply to one of our boards. To this end, 2 years ago we made an agency policy change to hold cases open 90 days in order to secure corrections to deficient applications.

Other changes included direct communications with applicants to clarify issues or request additional documentation to help their cases, as well as conducting periodic board member and agency staff training on current service policies and procedures.

The men and women who serve our Nation, along with their families, are our most important asset. The Army Review Board Agency is one of the ways we take care of our most important asset. I thank all of you for your continued support of our volunteer Army and the Army Review Boards Agency. Thank you.

[The prepared statement of Ms. Blackmon can be found in the Appendix on page 28.]

Mr. COFFMAN. Thank you, Ms. Blackmon, for your testimony.

Mr. Woods, you are now recognized for 5 minutes.

STATEMENT OF ROBERT L. WOODS, ASSISTANT GENERAL COUNSEL FOR THE ASSISTANT SECRETARY OF THE NAVY FOR MANPOWER AND RESERVE AFFAIRS

Mr. WOODS. Good morning, Chairman Coffman, ranking member, and distinguished members of the subcommittee. I am Robert Woods, the Assistant General Counsel for Manpower and Reserve Affairs. As such, I am the senior legal advisor to the Assistant Secretary of the Navy for Manpower and Reserve Affairs. And on behalf of the men and women of our various naval review boards, I thank you for the opportunity to appear before you today to have this overview of our review boards.

Let me start by assuring you that the leadership of the Department of the Navy is committed to assisting our present and former sailors and marines with fair and open processes in regard to the subjects presented to our boards, including those seeking corrections to their military service records, such as adjustments to their discharge characterization.

Over the past few years, we have paid particular attention to petitions involving invisible wounds. We have conducted outreach sessions with veteran service organizations, provide professional training for our staffs, prioritized the processing of these cases, obtain medical review and input, and apply liberal consideration principles to ease the burdens of proof for the veterans.

However, I do note that every petition is unique, and those involving the effects of service-connected sexual assault, post-traumatic stress disorder, traumatic brain injuries, or various mental health issues are among the most difficult and complex cases that we see at our review boards.

We are keenly focused on the need for timely resolution of our petitions to our boards. As such, we are engaged in efforts to help streamline and modernize our processes. However, we also recognize that much of the time needed to properly adjudicate these petitions is related to the increased complexity and volume of the materials presented.

Now discharge upgrade petitions, including those seeking a change in the narrative reason for discharge and/or change in reenlistment codes, are adjudicated by our two primary boards, the Naval Discharge Review Board and our Board for Correction of Naval Records. These boards are established pursuant to specific statutory authority in title 10.

And in addition to these boards, we also have seven non-statutory boards including the Physical Evaluation Board, the Combat-Related Special Compensation Board, the Naval Complaints Review Board, the Naval Clemency and Parole Board, the Navy Department's Board of Decorations and Medals, the Disability Review Board, and the Personnel Security Appeals Board.

So with this brief introduction, I, again, appreciate the opportunity to present to you, and I am happy to address any questions you may have about our review boards. Thank you.

[The prepared statement of Mr. Woods can be found in the Appendix on page 37.]

Mr. COFFMAN. Mr. Teskey, you are now recognized for 5 minutes.

**STATEMENT OF MARK S. TESKEY, DIRECTOR, AIR FORCE
REVIEW BOARDS AGENCY**

Mr. TESKEY. Good morning, Chairman Coffman, ranking member, distinguished members of the committee. On behalf of the men and women of the Air Force Review Boards Agency, thank you for the opportunity to appear today. With your permission, I am going to summarize my remarks and submit the complete statement for the record.

As director of the Review Boards Agency, I am responsible for the administration, oversight, and leadership of 10 appellate-level administrative review boards, 8 on behalf of the Secretary of the Air Force, and 2 on behalf of the Secretary of Defense.

We receive approximately 15,000 cases annually from actively serving airmen, which include regular Air Force, Air Guard, Air Force Reserve, and civilian employees, veterans, and their families. Our non-statutory Air Force boards adjudicate a wide variety of decisions on behalf of the Secretary of the Air Force.

The Air Force Review Boards Agency strives to quickly and fairly adjudicate its cases, and we do so. And we are falling further behind. Over the past 10 years, our business has materially changed. Four factors have significantly impacted the Air Force Review Boards Agency in both positive and negative ways.

Our organizational transformation and modernization has solidified our processes, established metrics, and allowed us to leverage technology. Our increasing caseloads are increasing and more complex. We have resource constraints and we have legislative and regulatory changes that we are continually implementing.

In 2011, the Secretary of the Air Force directed the Air Force Review Boards Agency to begin an extensive transformation effort. Our transformation efforts were long overdue and created significant challenges because we did them while we continued to process cases.

We did not compromise on quality or fairness, and we implemented these process improvements temporarily sacrificing processing time in the near term with the aim of expanding our capacity and shortening processing time in the long term.

We quickly realized the additional capacity generated by our process improvements was outpaced by an ever-increasing number of applications, and those applications were increasingly complex.

We requested an Air Force manpower assessment in 2013, and that helped us determine that the agency was resourced appro-

priately. The assessment revealed significant human resource shortfalls and in the budget for fiscal year 2018 we secured an additional 18 military enlisted billets to increase staffing levels.

We continue to work on monitoring, improving our processes, and coordinating with the Air Force leadership to balance our requirements with other critical resource demands like readiness, training, sustainment, and modernization.

And recent legislative and regulatory changes have also levied the additional responsibilities on the boards. A perfect example is the emphasis on action on post-traumatic stress, traumatic brain injury, and sexual assault and similar injuries.

The recent legislation required the Discharge Review Boards and the Boards for Correction of Military Records to review and consider upgrading discharge characterization of veterans who experience these conditions and were subsequently discharged with other-than-honorable discharges.

Each of the four factors mentioned earlier place increased demands on our agency and its ability to provide prompt relief. We are doing all we can internally to secure the resources we need internally within the Air Force and to more effectively perform our statutory and regulatory duties.

We are acutely aware that at the end of every one of our nearly 15,000 cases each year, there is an airman, a veteran, or a family member who is awaiting a decision. We are dedicated to these people and strive daily to provide fairness, equity, due process, and justice to all of our applicants.

Mr. Chairman, I thank you again for the opportunity to appear before this committee and look forward to your questions.

[The prepared statement of Mr. Teskey can be found in the Appendix on page 51.]

Mr. COFFMAN. Thank you. According to the Military Discharge Review Boards, the data from fiscal year 2016, the Army upgraded 36 percent of cases with PTSD or TBI. However, the Navy and the Air Force only upgraded 18 percent and 15 percent of cases with PTSD or TBI respectively.

Ms. Blackmon, could you please provide an explanation as to what the Army is doing differently to ensure that men and women who served and were diagnosed with PTSD or TBI receive an upgraded discharge?

Ms. BLACKMON. Sir, I will tell you when we actually received Secretary of Defense Hagel's guidance in November 2014, one of the first things that we looked to do was to make sure that we have prioritized the cases. So in other words, they were not a part of the first-in, first-out.

We were very careful to make sure that our mental health providers that actually set the case was very liberal in terms of looking at whether there was actually a nexus between the misconduct and the PTSD.

And so in situations where we were looking at things like alcohol abuse or drug abuse and the mental health providers had essentially come back and said we do see a nexus, we were more liberal, if you will, in terms of upgrading those specific discharges.

Mr. COFFMAN. Okay. Thank you.

Following up on my previous question, Mr. Woods and Mr. Teskey, could you please explain why the percentage of cases you upgraded for those who claim PTSD or TBI are drastically lower than the United States Army's?

Mr. Teskey.

Mr. TESKEY. Thank you. We go back and we took a look at the numbers and scrubbed those numbers, and we don't have as many discharges that are characterized in an unfavorable light, number one. For instance last year, Air Force-wide, we had 155 UOTHCs [under other than honorable conditions] and we had 43,000 discharges, roughly. So we don't have the numbers to deal with that the Army has as well.

Mr. COFFMAN. Okay. Mr. Woods.

Mr. WOODS. Yes, sir. I haven't seen any of the cases that the Army has given their upgrades to, nor have I seen the cases for the Air Force. I can only speak to what the Navy has done.

And in implementing the same exact principles, which are those of liberal consideration in trying to connect the dots between the condition of PTSD and the misconduct, these cases are dealt with on an individualized basis.

And typically those that are not upgraded are ones in which we have been unable to make that connection between the PTSD and the misconduct, or the misconduct was of a nature that it was either fairly severe or it was otherwise intentional or things of that nature.

And so all I can say is that we review each of these cases individually. We spend a fair amount of time on each of them and labor on them intently. And so I don't really know that I can explain the differences, quite frankly.

Mr. COFFMAN. Thank you. Following my previous question, it is my understanding that Discharge Review Boards, DRBs, are only located in the Washington, DC area, which means that many veterans would find it cost prohibitive to fly themselves, their attorneys, or their supporting witnesses to testify in person at a DRB.

Can you please detail how each service is implementing or at least testing the use of video teleconferencing, VTC, technology? I believe this is an important technology that will allow more veterans to provide personal testimony to the discharge boards without physically being present.

Ms. Blackmon, why don't we start with you?

Ms. BLACKMON. Sir, in November of last year we actually reinstated our regional traveling panel. The first one was held in Atlanta, Georgia. We had potential—I think there were 26 people that had signed up to actually participate. We actually received 19. We are looking to host our next panel in March over in Dallas, and we are looking to conduct these on a quarterly basis.

Mr. COFFMAN. Thank you. Mr. Woods.

Mr. WOODS. Yes, sir. Our Discharge Review Board attempted to use video teleconferencing at one point, but we have run into a number of security-related struggles through our communications systems with the Navy.

And so as an alternative, we have turned to telephonic interviews for personal appearances. And we have actually had quite a

bit of success with them. We find that the petitioners appear to be somewhat more relaxed in their own environment, able to——

Mr. COFFMAN. So I just want to make sure that when you speak to telephonic, that is not VTC?

Mr. WOODS. That is correct.

Mr. COFFMAN. Oh, it is VTC?

Mr. WOODS. It is not.

Mr. COFFMAN. It is not VTC. Okay, please.

Mr. WOODS. Exactly. It is through just a normal telephone line.

Mr. COFFMAN. Okay.

Mr. WOODS. And we have a conversation with them and let them present any materials that they care to present and any arguments that they care to present. And we have had some very good success with that, both from the standpoint of having an increased rate of petitioners showing up to the actual personal appearance.

Whereas, when we were having them in person, and we still do have some in person if folks are in the area or if they want to travel here, they are certainly able to have an in-person one at the Washington Navy Yard.

We do not have a traveling panel that goes around the country. And we have found that the new telephone usage has really improved the capability of folks to come and do their presentation, and they seem to be satisfied with that.

Mr. COFFMAN. All right. Mr. Teskey.

Mr. TESKEY. Our Discharge Review Board does do a traveling VTC.

Mr. COFFMAN. Okay.

Mr. TESKEY. We do it at Robins Air Force Base in San Antonio, Texas, and then on the west coast. We typically have one member of our Discharge Review Board travel and set it up, and we hold it on a base.

Part of that is to verify who is coming, so that we know who they are. And the other challenge that we have is getting past our own firewalls. We are evaluating other technology approaches to try to use something like Skype or FaceTime, but that is in the evaluation stage.

Mr. COFFMAN. So what would you—it would seem like Skype would be fairly simple and would have the same principles of VTC. Well, I guess it wouldn't. You would—yes. No, I think it would.

Mr. TESKEY. It would. We have it in our military networks. Obviously, with security concerns——

Mr. COFFMAN. Right, okay. I see,

Mr. TESKEY [continuing]. We have a problem getting past our firewall.

Mr. COFFMAN. That is——

Mr. TESKEY. That is our challenge.

Mr. COFFMAN. I get you. All right, that is—I understand that. Okay.

Ms. Tsongas.

Ms. TSONGAS. Thank you. I would like to follow up on the issue of video, VTC technologies, and the use of that so that those who are seeking to have their characterization changed have that opportunity to make the personal story.

And I would sort of like to extend it to the BCMRs [Boards for Correction of Military Records] where that is not the case, where the right to make that statement personally doesn't exist. And so the issue of the VTC is sort of a follow-on issue.

And I know that the Human Rights Watch has really been carefully considering the ways in which these decisions are being made, and I think a former staff member on one of the boards made the point to the Human Rights Watch the importance of a personal appearance at the DRB as being, quote, "huge" and possibly, quote, "the difference between getting an upgrade or not."

So in that context, last September there is here a Military Sexual Assault Prevention Caucus, and we hosted our second briefing on male military sexual assault. And at that briefing we heard from Heath Phillips, a former sailor who was repeatedly raped and retaliated against by fellow sailors and his chain of command as well.

Phillips eventually left his ship saying, quote, "I couldn't take it no more," unquote. Phillips said, quote, "I was not going to go out to sea with these men and deal with this every single day," unquote.

So he agreed to an under-other-than-honorable discharge rather than facing a court-martial for going AWOL [absent without leave]. And he said, quote, "After being subjected to countless sexual assaults, beatings, threats, humiliation, in constant fear, a total basket case, I would have signed a deal with the devil himself to escape the torture I kept getting while onboard the ship," unquote.

And while the VA [Department of Veterans Affairs] has found that he has PTSD that is 100 percent service-connected, he is still fighting after 20 years to get his discharge characterization upgraded. So he has told my staff, quote, "That my strong belief is if I am allowed a personal hearing and look them in the eyes and they could hear about my life and what I went through, the decision would not be denied."

So again, in the context of the BCMRs, I would just like to hear your thoughts on the feasibility of rethinking, of affording petitioners who requested an opportunity to appear. And as you are considering the use of video technology, whether or not that might be permitted in, you know, that more narrow version might be permitted in the BCMR context.

And then we will start here with you.

Ms. BLACKMON. So ma'am, as I had indicated, we do within our Discharge Review Boards have the VTC capability. And so a situation as you had described, that would be certainly one that we would have had the traveling panels with the VTC equipment.

Ms. TSONGAS. So even though it is in the BCMR context, as opposed to the——

Ms. BLACKMON. Or BCMR, so with the personal appearance, typically we only do about two or three per year. With the Army, we are looking at a magnitude about 14,000 cases that we adjudicate, you know, with a record review. And so those individuals that do feel that their stories are compelling, there is an opportunity to do a personal appearance.

Ms. TSONGAS. And how to make that decision since it is not a right, it is a discretionary decision on your part?

Ms. BLACKMON. We essentially look at the records itself to see if there is insufficient evidence within the material that the applicant has provided.

And if we think there is information that is not there, that is lacking, then there is an opportunity to bring them in to get additional information. That would be one of the opportunities that we would look at to actually, you know, bring them in to say that we just don't have sufficient evidence with the records review.

Ms. TSONGAS. So this gentleman obviously served in the Navy, and the Navy has a different approach. I would welcome your thoughts.

Mr. WOODS. Yes, ma'am. Thank you. That is a tragic case, and I am sorry to hear the suffering that he is going through. The problem with having the personal appearances at the Board for Correction of Naval Records is really one of resources and the magnitude of the number of cases that we deal with there.

We actually haven't given consideration to perhaps having some type of a set-aside for discharge review cases because that is a smaller portion of our overall work requirement there. So that is something that we certainly could look at.

But typically what happens when a person petitions and requests a personal hearing, they are asked what the purpose of that personal hearing is. What do they want to accomplish with that personal hearing?

And in the few cases that I have seen where those have been requested, they really don't articulate the type of rationale that you just described. I think that rationale that he just gave would probably be compelling if it was articulated to the board. But as far as I know, I have not seen that type of an argument made to garner a personal hearing.

As I said, the magnitude of the caseload that we have at the board and the resources that we have, if we added personal hearings, a considerable number of them anyway, it would really stall things out considerably. And we are already pretty much at maximum capacity. So I think that would be problematic, but we would certainly be interested in considering it. Thank you.

Ms. TSONGAS. Well, we will certainly go back and revisit this with this gentleman who, as I said, has come to speak before the Military Sexual Assault Prevention Caucus and follow on. But I can't imagine that he is alone in his story. And I do think even though it might be costly, we are talking about something that has a real impact on people's lives.

I have one more question if I could? Between 2000 and 2009, government reports reveal that thousands of service members were discharged improperly for a, quote, "personality disorder" unquote, many of whom were rape victims.

Though their discharges were usually honorable, the narrative reason for discharge on their discharge paper, DD-214, unfairly labels them as having a, quote, "personality disorder" unquote. This is deeply stigmatizing and may prevent them from getting jobs or benefits.

Brian Lewis, a survivor of male sexual assault who also has briefed the Military Sexual Assault Prevention Caucus as well as testifying in front of the Senate Armed Services Committee, has

said that as a result of his personality disorder diagnosis, he carries his, quote, “discharge as an official and permanent symbol of shame on top of the trauma of the physical attack, the retaliation, and its aftermath,” unquote.

For veterans whose doctors confirm that they do not have a personality disorder, what prevents your offices from changing the narrative reason for discharge to the neutral, quote, “secretarial authority,” unquote, as was done after the repeal of “don’t ask/don’t tell” for those who were discharged for their sexual orientation?

And I will start to the right here since I kind of short-circuited you in the previous round.

Mr. TESKEY. So could you repeat the last part of the question, ma’am?

Ms. TSONGAS. So, you know, for veterans whose doctors have confirmed that they do not have a personality disorder, what prevents your offices from changing the narrative reason for discharge to the more neutral, quote, “secretarial authority” unquote, which was done after the repeal of “don’t ask/don’t tell” for those who had been discharged for their sexual orientation?

Mr. TESKEY. Nothing prevents us, and we have, our Board for Correction of Military Records had considered exactly the type of cases that you are talking about, and we have changed the narrative or the reason for discharge on the 214s.

So we do that on “don’t ask/don’t tell” on a regular basis. We have done it on sexual assault, sexual trauma cases as well. So we do address that.

Ms. TSONGAS. Do you have some sense of what the metrics are? Is it routine, automatic, or is it a complicated process?

Mr. TESKEY. So it is not a complicated process. Is it routine? We have a presumption or we regularly consider the facts of the case, and then we make an assessment. And we go back and forth with the applicant as well.

When we do our, they submit the case, we evaluate it, and then we provide our analysis back to the applicant to see if they have anything additional they want to add, because we try very hard to be transparent and fair.

Then they get a chance to respond, and then we, there can be this back and forth a couple of times so that they have the opportunity to submit additional information to prove their case.

But what I found in reading the opinions of our board members is they are very generous, and they attempt to go out of their way to find a solution that is the right solution for the applicant.

I have only been in the job since about December, so I am the new person on the table. But what I have seen is our members are very honorable and they are very considerate, and they really, really try to do the right thing.

Ms. TSONGAS. That is good to hear. Mr. Woods.

Mr. WOODS. Yes, ma’am, I think based on the factual pattern that you presented, I would find it to be highly unlikely that we wouldn’t change not characterization necessarily, but the reason for discharge to secretarial determination.

If the person presents medical evidence that refutes the original diagnostic, or even it might not have been a diagnostic, it may have just been simply an administrative determination of a personality

disorder without a medical determination. That is entirely possible, especially back in the Vietnam era and later before, you know—or more recent times when we have become a little bit more aware of these kinds of situations.

So we certainly have the capability of doing it and especially if there is refuting medical evidence. And in all of these cases, we do have them reviewed by a medical practitioner to try to determine whether or not there is evidence that would suggest that, in fact, there may have been a personality disorder situation. But that is not a change that we would be particularly reluctant to make, quite frankly.

Ms. TSONGAS. Do you have any sense of the numbers of the Air Force that has that?

Mr. WOODS. I am sorry, I don't. But I am happy to get those.

Ms. TSONGAS. Actually I would ask the question—I would like to ask that, if you could get back to me?

Mr. WOODS. I will take that for the record. Yes, ma'am.

Ms. TSONGAS. Yes, okay.

[The information referred to can be found in the Appendix on page 61.]

Ms. BLACKMON. So ma'am, I would say very much like the Air Force and the Navy, the Army as well, as long as we have the appropriate documentation, we routinely change the narrative to reflect secretarial authority.

Ms. TSONGAS. Thank you, all. Appreciate your testimony.

Mr. COFFMAN. Thank you, Ms. Tsongas.

The statistics for approved discharges, discharge upgrades, appear low. What is the most common reason these applications are disapproved? What can the review boards do to help improve the quality of these applications? And lastly, can you explain how you apply quote/unquote, "liberal consideration"?

Ms. Blackmon, we will start with you.

Ms. BLACKMON. So sir, in terms of the reasons that we routinely deny would be for cases where we see there is not a nexus. For instance, we had a situation with an individual that had documented PTSD, and so as we looked at the specific case, there were instances with drunken and disorderly conduct, which the mental health providers could determine that there was a nexus between that misconduct and PTSD.

However, in the same vein, there were challenges where this same individual had stolen checks from a roommate of about \$500, taken them to the American Express, cashed them, and basically was larceny and forgery. So that particular instance, the mental health providers looked at it and said there was not a nexus between the misconduct and the PTSD. And so often we have cases that kind of mirror that.

On the converse side of the house, we had a situation where there was an individual that came in, that essentially said, you know, "the Army separated me with a disability separation. I was a rape victim." She says, "I think it should have been a disability to retirement."

Unfortunately, the perpetrator had individuals that could corroborate his story. But as we looked at the case, we kind of looked at the behavior of the applicant and we could see that there was

a downward spiral in behavior after this particular incident had happened. We saw the applicant had become indrawn, inwards, sullen.

And so with that, we said there has to be a nexus. And so with that, we basically took her from a 20 percent disability separation to a 60 percent disability retirement and paid her back pay to 2002.

Mr. COFFMAN. Okay. Thank you. Mr. Woods.

Mr. WOODS. Yes, sir.

Mr. COFFMAN. Oh, I am sorry. Ms. Blackmon, can you explain how you—do you feel like you have adequately explained liberal consideration?

Ms. BLACKMON. Consideration? Exactly, because I think without that ability to say that it is black and white, we were looking at things that said there may not necessarily be the documentation there, but if you looked at—

Mr. COFFMAN. Okay.

Ms. BLACKMON [continuing]. The markers, per se, there were other things that existed—

Mr. COFFMAN. Okay.

Ms. BLACKMON [continuing]. Where we considered it liberally as opposed to just—

Mr. COFFMAN. Okay. Very good.

Ms. BLACKMON [continuing]. A black and white case.

Mr. COFFMAN. Okay. Mr. Woods.

Mr. WOODS. Yes, sir, first to the examples. We have provided a couple of examples in the written testimony, and I can summarize two of them that reflect both sides of the coin.

The first was a Marine corporal who deployed in 2004 for Operation Iraqi Freedom, was suffering from PTSD as a result of that service, engaged in a single incident of marijuana use, positive at some point. And ended up with a disciplinary action and an unfavorable discharge.

That was a case that we took into the board, reviewed the facts. And the fact that it was a one-time event, that it appeared relatively close after his return from the AOR [area of responsibility], and the fact that he did have a recognized diagnosis of PTSD, we thought that it made sense that that was likely to have a causal connection, and as a result we upgraded that particular discharge.

On the other side of the coin, we had a Marine sergeant who had deployed twice, once in 2005 and the other in 2008, I believe, both for 6 months in support of Operation Iraqi Freedom. And after his return he was engaged in some misconduct, illegal drug use in particular, and was actually scheduled for separation.

But in light of his performance and his combat tours and things of that nature, they held his discharge in abeyance and said we are going to, you know, hold this out there on the event that you are able to remain out of trouble for the next year.

Unfortunately, 2 months later, he got in more trouble and was caught purloining copper gutters from a government building that were valued at about \$15,000 and selling them downtown to a local salvage yard.

And as a result of that, he was disciplined and set up for a discharge board before a board of officers where he was represented

by counsel. That board of officers saw the evidence of the theft and as a result voted unanimously that he should have an under-other-than-honorable-conditions discharge.

We couldn't find the connection there between the PTSD and the theft, and that was a case in which we did not grant relief. And so I don't want to say those are typical necessarily.

But in a large sense they are in that, you know, when we are talking about singular incidents of misconduct relatively connected to the combat service and/or the PTSD issue and then a discharge, those are cases in which we would be more likely to grant relief.

Whereas, if you are engaged in some type of conduct that is of the nature I just described or something along those lines, some type of intentional crime or harm that they did to someone, those are the cases in which we are going to be less likely. I think you asked a couple of other questions within there as well——

Mr. COFFMAN. Sure.

Mr. WOODS [continuing]. And—address those as for you.

Mr. COFFMAN. Yes. Just one follow-up on the——

Mr. WOODS. Yes, sir.

Mr. COFFMAN [continuing]. On the case that you——

Mr. WOODS. Yes, sir.

Mr. COFFMAN [continuing]. Just described. What was it? Do you recall if that was non-judicial punishment or did it receive summary special general court-martial?

Mr. WOODS. It appears that they took action via non-judicial punishment, sir.

Mr. COFFMAN. They did? Okay, very good.

Mr. WOODS. Back in preparation for the discharge board.

Mr. COFFMAN. Okay. Okay, so what can the review boards do to help improve the quality of these applications?

Mr. WOODS. Right.

Mr. COFFMAN. Yes.

Mr. WOODS. Well, that has been part of our outreach program of late, and we have been reaching out to veteran service organizations. In fact, our Naval Discharge Review Board created a pamphlet, which I believe we have provided to your staffs, that describes the process, gives them insight as to how to proceed in presenting their case and their petition to the board. And so they have been distributing those pamphlets. We also have information on our websites.

And in addition, when a petitioner files their appeal, if it appears to our folks that there is either insufficient evidence to support their package, or we have some questions about it, there is a fair amount of back and forth between the staff and the petitioner.

Mr. COFFMAN. Okay.

Mr. WOODS. And so those are some of the ways that we attempt to help folks proceed in front of our boards.

Mr. COFFMAN. Okay.

Mr. Teskey.

Mr. TESKEY. So to start out with, I will piggyback on what Mr. Woods was saying as far as how we are improving our process and how we are improving the applicants' ability to file claims or to file corrections, we do just as Mr. Woods said.

When we do get an application, we have a lot of back and forth between the applicant and our claims examiners so that we can distill down what they need and what they can get. We also at times go to the record centers, go to the various sources of information on their behalf as well and request records.

Mr. COFFMAN. Okay.

Mr. TESKEY. As part of our process, we also request advisories from the people who own the policies throughout the Air Force so that we can be further educated in our board. And we serve those advisories on the applicant as well so they are aware of what is going on.

We have a reading room so that they can research our past cases. We are looking at—we have digitized our process——

Mr. COFFMAN. Well, you——

Mr. TESKEY. Yes.

Mr. COFFMAN. Mr. Teskey, when you say reading room, of course you are referring to that——

Mr. TESKEY. It is a virtual reading room, yes.

Mr. COFFMAN [continuing]. It is available online? Okay. Very well.

Mr. TESKEY. Yes.

Mr. COFFMAN. Okay.

Mr. TESKEY. And we also, as part of our modernization, we are looking at trying to facilitate electronic submissions and electronic applications. But, you know, we still have security issues——

Mr. COFFMAN. Sure.

Mr. TESKEY [continuing]. And we are working through that. But we are trying to make this more accessible.

Mr. COFFMAN. Okay.

Mr. TESKEY. Okay. So do you—and then I will go on to the other——

Mr. COFFMAN. Liberal consideration. Yes.

Mr. TESKEY. Pardon me, sir?

Mr. COFFMAN. Liberal consideration.

Mr. TESKEY. Okay. So liberal consideration, I can give you an example of where we use liberal consideration. First off though, whenever we deal with liberal consideration in our Discharge Review Board and our BCMR, we serve, we review the Secretary's memo, the Secretary of Defense's memo on liberal consideration.

We also, the Secretary of the Air Force penned a memo on what liberal consideration means and we give that to the members as well. So we reiterate that and we hammer that home. We also deal with that through training of our members.

So then I will give you an example of liberal consideration. We had a member who was an air controller over in Afghanistan, had a number of tours over there. Got PTSD, was diagnosed over there. But he sought some self-medication, and he got himself into trouble, and he just shared some of the medication Xanax with some of his colleagues.

He also was married and he committed adultery. As part of his discharge, he was originally proposed for a court-martial. He took an Article 15.

Mr. COFFMAN. Okay.

Mr. TESKEY. And then he got an under-other-than-honorable-conditions discharge. He applied to the Discharge Review Board. We gave liberal consideration to the PTSD and the nexus between that and the drugs and the adultery, and the things that happened over in the theater, and we upgraded his discharge to a general under-other-than-honorable-conditions.

Mr. COFFMAN. Thank you very much.

And I would like to now defer to the ranking member, Ms. Speier.

Ms. SPEIER. Mr. Chairman, thank you. And again, I apologize for the delay in my arriving, but as I think you have been told, I was in an important Intelligence Committee meeting.

So one of the things that I am concerned about is the fact that there are such disparate grants provided by the various services. And for instance, the Army granted upgrades for four out of eight requests at 50 percent, the Air Force at 20 percent and the Navy at 11 percent.

And I would like to see it standardized because I think for our military service members, they should all be treated the same. And I don't know that they are being treated the same, and I don't know that outside of conversations you may have with each other from time to time, whether they truly are being treated the same.

So let me ask you, Mr. Woods. You have the lowest percentage, and in particular as I look at MST, the others were at 50 percent and 20 percent, and you were at 11 percent. I have talked to all of you privately and have asked for additional information, which I think will certainly inform our work as we move forward on this issue, but I would like for you, in particular, Mr. Woods, to comment.

Mr. WOODS. Yes, ma'am. Thank you. I think that our dealings with these cases is such that I am not sure how to suggest consistency across the three services, and I am not sure there isn't consistency is the first point, because we have not really studied whether there is or there isn't.

Obviously, the numbers would not reflect consistency, but given the nature of each individual case and the fact that they are determined individually based on the merits of those particular cases, in any given year or period, those numbers can certainly fluctuate. And I can't tell you that we aren't doing very similar things in the Navy boards as they are in the other services boards.

I can at least—those—

Ms. SPEIER. Well, for instance, Mr. Teskey, when he met with me, made a compelling case that in the Army they bend over backwards, give the benefit of the doubt, go the extra mile. And I didn't hear that when you met with me.

Mr. WOODS. Right.

Ms. SPEIER. So not that you can extract anything from conversations, and that is why we would like to look at the cases themselves—

Mr. WOODS. Certainly.

Ms. SPEIER [continuing]. Redacted, of course. But it would seem to me that there would be great benefit for standard policies to be put in place that would, you know, guide your decision making so

that someone in the Navy who is making a request for an upgrade is treated the same way as someone in the Army.

Mr. WOODS. Makes total sense to me as well, and I am hopeful that—

Ms. SPEIER. So let us look at—

Mr. WOODS [continuing]. That we are doing the same types of standards, but I can't tell you for sure whether we are or we aren't.

Ms. SPEIER. Well, let's just look at military sexual trauma.

Mr. WOODS. Sure.

Ms. SPEIER. Fifty percent grants in the Army and 11 percent grants in the Navy.

Let me ask Mr. Teskey. How do you evaluate these cases that you would have 50 percent of them being changed?

Mr. TESKEY. Well, I am the Air Force, ma'am.

Ms. SPEIER. Oh, I am—

Mr. TESKEY. So—

Ms. SPEIER [continuing]. I am sorry.

Mr. TESKEY. It is all right, but I don't want to presume to speak for the Army. And that would be Ms. Blackmon.

Ms. SPEIER. No, and I misspoke and I apologize, Ms. Blackmon. I got your services—so let's go to you, Ms. Blackmon.

Ms. BLACKMON. Yes. As I had indicated earlier, when we initially got the PTSD guidance in November 2014 that Secretary Hagel had sent out, I said we also need to apply the same very liberal consideration for military sexual trauma. And so we started to do certain things like training.

For instance, last November, we brought in a renowned psychologist by the name of David Lisak that trained the entire workforce on sexual assault and what did that mean. Not necessarily just because there wasn't a police report or a CID [Army Criminal Investigation Command] report, that there were other markers that the board and the workforce should be considering as they actually wrote the case.

And so as they started to look at it, it wasn't just very a black and white situation where it is we have this documentation, or because there was a lack of documentation we are going to deny it. It was more how can we say that there are other things that are happening that could suppose sexual assault as opposed to, no, it did not happen.

We also brought in a panel of sexual assault survivors that kind of talked to the workforce as well to say as a result of that act, these were the things that manifested themselves within me as an individual and as a person.

So that as our analysts, when we are writing the record of proceedings, they had the ability to kind of understand the impact of what that meant and what was happening to the victim, if you will.

Ms. SPEIER. All right. With that background, Mr. Woods and Mr. Teskey, have you, for instance, brought in sexual assault survivors to have them explain to your board members the experience and the ramifications?

Mr. WOODS. To my knowledge, we have not brought in sexual assault survivors to do that. However, in response, back in the December timeframe, this past December, in some of our outreach efforts and then discussions with representatives from Human

Rights Watch and in taking into consideration a report that they issued, we got concerned that perhaps we weren't paying the type of attention to some of these cases as we need to.

And as a result, we partnered with our Department of the Navy Sexual Assault Prevention and Response Office and were able to have four of their subject matter experts, a medical doctor, a clinical psychologist, a trauma nurse, and a criminologist, take and look at the cases that we had done with regard to the sexual assault trauma over the past, give or take, 2-year period, 2015 and 2016.

And they reviewed approximately 86 cases in great detail, with a view toward trying to determine whether or not we could establish some type of policy that would help us be cognizant of the concerns and issues that presented in these types of case, or as if we were missing something.

And honestly they struggled in their review trying to connect the dots in the cases that we denied. They felt that the cases that we granted made a lot of sense.

And what they recommended and what we are about to enter into is an agreement with them to use their expertise to gain advisory opinions. And we are even considering having one of their experts sit on any panel at the Board for Correction of Naval Records that would involve a claim of sexual assault.

Ms. SPEIER. Okay. We are going to be running out of time, so Mr. Teskey?

Mr. TESKEY. So this past January we provided training to our Board for Correction of Military Records, which all the panel members are volunteers. We had a panel come in for about 2 hours of—

Ms. SPEIER. Of sexual assault survivors?

Mr. TESKEY. Not of survivors, but of mental health professionals and people who specialize in sexual assault to educate them on, as Ms. Blackmon was saying, on some of the characteristics and markers and to provide that training. That is one.

We also have our psychiatrists who are members of the board on those kind of cases for the Discharge Review Board. They provide advisories to the Board for Correction of Military Records on any situation where there is an allegation of sexual assault, sexual trauma.

So we do go out of our way to make sure that our members are educated, and as a result of our training this past year as well, we believe that more frequent engagement internally with our members on discussing these cases and bringing these issues up is required. And we are looking at probably doing kind of a 6-month check-in with everybody for about a half a day on some of these issues that we need to drive home.

Ms. SPEIER. So here is an area that I am very concerned about. If you had the Members of Congress, who, when they left office under whatever circumstances, had a similar ranking of honorable, general, or less-than-honorable, a lot of Members would leave with less-than-honorable discharges because of their behavior here.

Now, they leave and they go out and they continue with their lives and presumably get jobs and do well. I worry about the service members who have been labeled with a general discharge or

less-than-honorable and the likelihood of them ever getting employment.

Now, I can tell you that there have been circumstances that I have seen where persons in civil society who have committed felonies can come back to the courts subsequently and make the case that they have been upstanding citizens for a period of time and have those felonies reduced to misdemeanors. And then be much more likely to find employment.

I really want us to think about whether or not we should create a mechanism within these boards that will allow individuals to come back subsequently, after a period of years, make the case for their good behavior and potentially have those discharge identifications upgraded. And that is more a comment than anything else, but hopefully we can talk further about that and maybe do something in the NDAA about that.

I would like to just spend a couple of minutes on VSOs [veteran service organizations]. To what extent have you incorporated feedback or recommendations from VSOs?

Ms. Blackmon.

Ms. BLACKMON. So ma'am, we have—

Mr. COFFMAN. Oh, could you please—let us go forward with more questions, but please limit your responses a little quicker please if you could. Thank you.

Ms. BLACKMON. Okay, sir. So, ma'am, we have had almost 100 engagements with veteran service organizations where it is an opportunity to provide them feedback on what we do, and an opportunity for us to actually hear the things that we may not be doing that are so well. So we do have that interaction with them frequently.

Ms. SPEIER. Okay. Mr. Woods.

Mr. WOODS. Likewise, we are engaged with the veteran service organizations quite a bit. As I have said before, we have created pamphlets for their use to distribute to those who are engaged in their organizations and we have tried to educate them on our processes. And we are happy and continue to do so. I can't say that we have done 100, but we have done quite a few outreaches as well.

Ms. SPEIER. Have they made recommendations that you have embraced?

Mr. WOODS. Other than some of the things that we have been doing, which is to better inform the petitioners of materials that they might consider providing if they can to enhance their case.

Also, too, one of the things that we have done in the Board for Correction of Naval Records is in any case where we have denied relief, we provide a short explanation of why that relief was denied and what the record was lacking such that if they feel that they can gather that information, they can come back and re-petition for reconsideration of that decision. And so with new and material evidence, if they present that, then we do that.

So we have tried to explain to them instead of just getting a sheet of paper that essentially says denied, we have tried to educate them a little bit in that process at the end if we haven't been able to do that on the front end.

Ms. SPEIER. Thank you. Mr. Teskey.

Mr. TESKEY. So we have not had that kind of outreach and engagement with the VSOs. However, one of the things as I came in in December, we have been looking at how we are going to pursue an outreach and education and communication plan. So that is one of the things we have been considering.

Ms. SPEIER. All right. So to the extent that they provide you with recommendations, would you also provide them to the committee so we will have the benefit of knowing what they are looking for? Thank you.

Mr. Chairman, I yield back.

Mr. COFFMAN. Thank you, Ranking Member Speier.

If we could, just one remaining question and to all three of you. Do the boards have a feedback mechanism to inform the services of common personnel record errors you are seeing?

Ms. Blackmon.

Ms. BLACKMON. I would have to take that for the record.

[The information referred to can be found in the Appendix on page 61.]

Mr. COFFMAN. Okay. Thank you. Mr. Woods.

Mr. WOODS. Same.

[The information referred to was not available at the time of printing.]

Mr. COFFMAN. Mr. Teskey.

Mr. TESKEY. I have talked with our personnel folks in A1 [Air Staff office of Manpower and Personnel] as well about setting that up, because we feel like there needs to be a feedback loop so that they can correct things before we have to fix them.

Mr. COFFMAN. Okay.

Mr. TESKEY. So we are setting that up.

Mr. COFFMAN. Okay. Very good. Okay. I wish to thank the witnesses for their testimony this morning. This has been very informative. There being no further business, the subcommittee stands adjourned. Thank you very much.

[Whereupon, at 12:26 p.m., the subcommittee was adjourned.]

A P P E N D I X

MARCH 2, 2017

PREPARED STATEMENTS SUBMITTED FOR THE RECORD

MARCH 2, 2017

Opening Remarks – Chairman Coffman
Military Personnel Subcommittee Hearing
Overview of Military Review Board Agencies
March 2, 2017

I want to welcome everyone to the first hearing of the Military Personnel Subcommittee in the 115th Congress. I wish to congratulate the new and returning members of the subcommittee, and particularly congratulate our new Ranking Member, Congresswoman Jackie Speier of California. I look forward to working with each of you on the important issues facing this subcommittee.

The purpose of today's hearing is to receive an overview of the military review board agencies. The board for correction of military records and the discharge review board provide extraordinarily important services for our service members and veterans. These boards are charged with the difficult mission of correcting errors in, and considering mitigating facts and removing injustices from, military records. They receive thousands of applications each year that request everything from name changes on personnel documents to discharge upgrades.

Over the past several years, many have raised concerns regarding application processing, backlogs, and the approval rates for discharge upgrades. Many have also raised concerns about the treatment of applicants with PTSD or TBI who are seeking discharge upgrades based on mitigating medical facts in order to obtain essential behavioral health treatment. Congress has passed substantial legislation designed to help remedy some of these issues, and the services have continued to work to ensure that each applicant receives timely, full and fair, consideration of their case. I look forward to hearing whether these combined efforts have been effective, and if any additional legislation may be beneficial.

I am also interested to hear from the witnesses about additional challenges they face in the timely processing of applications, and what resources are needed to overcome these challenges. Finally, I look forward to hearing about ways to improve applicants' access to the boards by leveraging new technology like video teleconference.

Before I introduce our panel, let me offer the Ranking Member, Ms. Speier, an opportunity to make her opening remarks.

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RECORD VERSION

STATEMENT BY

MS. FRANCINE BLACKMON

DEPUTY ASSISTANT SECRETARY OF THE ARMY (REVIEW BOARDS)

UNITED STATES ARMY

BEFORE THE

PERSONNEL SUBCOMMITTEE

HOUSE ARMED SERVICES COMMITTEE

FIRST SESSION, 115TH CONGRESS

ON REVIEW BOARDS AGENCY PROGRAMS

MARCH 2, 2017

NOT FOR PUBLICATION UNTIL RELEASED BY THE

HOUSE ARMED SERVICES COMMITTEE

Chairman Coffman, Representative Speier, Distinguished Members of this Committee, I thank you for the opportunity to appear before you on behalf of the Army Review Boards Agency.

The Army Review Boards Agency provides the highest administrative level of review for personnel actions taken at lower levels of the Army. The Agency administers 13 boards, to include three statutory boards: the Army Board for Correction of Military Records, the Army Discharge Review Board and the Army Grade Determination Review Board. The remaining boards are policy boards, such as the Army Special Review Board (for evaluation appeals), the Suitability Evaluation Board (for removal of derogatory information from Soldier's personnel files), and the Ad Hoc Board (for consideration of officer elimination cases).

The Army Review Boards Agency staff consists of 112 civilian employees and 16 Soldiers. In addition, 120 Army employees serve as volunteer board members for the Army Board for Correction of Military Records (ABCMR). These volunteers are senior civilian employees drawn from across the Army Secretariat and Army Staff.

The Army Review Boards Agency administratively reviews and corrects service member records involving impropriety, inequity, changes in policy and law, and even human error. The Army remains steadfast in its effort to enhance the accuracy and integrity of Army military records by performing strategic-level, administrative reviews.

The Army Review Boards Agency acts in the interests of justice, applying equity and compassion when considering the merits of an individual case. The agency processes approximately 22,000 cases annually.

The Army Review Boards Agency is not an investigative body. It relies on evidence submitted by applicants, and in some cases, Army staff advisory opinions, to adjudicate the merits of a case. All cases are unique.

My vision is for the Agency to be an adaptable, cohesive and collaborative team of highly qualified, responsive and compassionate professionals. I expect them to be dedicated to customer service, transparency, justice and equity, and to carefully weigh the interests of Soldiers, Veterans, the Army, and the public. We strive to implement efficient and effective processes with the best technology available. We've accomplished a significant number of objectives at the Army Review Boards Agency over the past several years and look forward to achieving more in the future.

We recognize that upgrading discharges is one of the most important functions of this agency. The Army has successfully implemented the Secretary of Defense's 2014 guidance to the Boards for Correction of Military Records (BCMR) for requests to upgrade a Veteran's discharge characterization where PTSD may have been a contributing factor. In those cases for Veterans who claimed PTSD to include those who served before PTSD was a recognized diagnosis, Boards give liberal consideration to evidence of PTSD symptoms in the service record or in a diagnosis provided by

civilian providers. Moreover, special consideration is given to a Department of Veterans Affairs diagnosis of PTSD or PTSD-related conditions. For FY 15, the ABCMR has processed 114 applications from veterans discharged under other than honorable conditions, claiming PTSD/TBI and requesting discharge upgrades. Of these, the ABCMR upgraded 66 to general and 4 to honorable (61%). Similarly, for FY 16 the ABCMR processed 124 applications from veterans discharged under other than honorable conditions, and upgraded 52 to general and 3 to honorable (44%). In addition, the Army has extended the guidance to the Army Discharge Review Board. We apply the same liberal consideration guidance to veterans seeking upgrades who were discharged within the past 15 years. This policy was codified into law by the fiscal year 2017 National Defense Authorization Act (NDAA). For FY 15, the ADRB processed 91 applications from veterans discharged under other than honorable conditions, and upgraded 37 to general and 9 to honorable (51%). For FY 16, the ADRB processed 127 applications from veterans discharged under other than honorable conditions, and upgraded 60 to general and 6 to honorable (52%).

To fully implement requirements in the fiscal year 2015 NDAA to enhance participation of behavioral health professionals on these boards, we have added a neurologist, a psychiatrist, and three clinical psychologists to our medical advisor's office. This additional staff has enabled us to reduce the amount of time to get an advisory opinion from 400 days to less than 100 days. ARBA currently has 589 cases in process (401 at the ABCMR and 188 at the ADRB) in which the applicant contends Post traumatic Stress Disorder or Traumatic Brain Injury. Agency medical professionals provide in-

person or written input for board consideration for each of these types of cases. In compliance with applicable law, any written advisory opinion they render is provided to the applicant for review and response prior to consideration of the case by the board.

In addition to giving special consideration to assertions of the invisible wounds of PTSD, another type of invisible wound in which we liberally consider cases are those in which the applicant contends that they were a victim of sexual assault while in the military. We recognize that many of these assaults were never reported to military law enforcement, meaning there is no corroborating police report for the board to consider. Because of this, in the last year, we have trained all agency personnel on markers of sexual trauma so that victims receive the most favorable possible outcome from their case. This training was provided by a renowned forensic psychologist, and is in addition to the statutory requirement for advisory opinions (for the ABCMR) and mental health professionals serving on the ADRB.

Department-wide policy and Service Review Board procedures are also in place to ensure fair, equitable and consistent review of cases involving separation pursuant to the since-rescinded homosexual conduct policy, "Don't Ask, Don't Tell." The majority of separations pursuant to this policy were honorable. Approximately 332 former service members have requested discharge upgrades since the policy was rescinded in 2011. Average relief rates are almost 91%, with denials only occurring where aggravating circumstances were present. The Department encourages any former service member

who believes that his or her discharge was unjust to apply for discharge review, including those who previously applied for relief and are dissatisfied with the results.

As recently as one year ago, we processed all of our cases using paper. To improve efficiency, we are in the second year of reengineering the Agency's business processes. Major tasks include end-to-end digitization, consolidation of similar intake and promulgation activities into a single office within ARBA, improving our process for obtaining advisory opinions from subject matter experts, replacing an antiquated IT system, reorganizing ARBA manpower where needed to relieve capacity constraints, and creating a mechanism for measuring what ARBA does. Most importantly, ARBA is enhancing relationships with key external stakeholders to ensure all understand ARBA's commitment to quality, fairness, and equity in executing our vital mission. To date, we have fully digitized four of our thirteen boards. The way ahead includes a third year of business process reengineering with a goal to field a new case tracking system and to digitize all ARBA boards, most notably the Army Board for Correction of Military Records, our largest board. We encourage applicants to apply on line, and over the past few months we have scanned almost half a million documents from applicants to help us in this transition from paper to electronic processing of applications.

Our cases have become more complex, and our case processing times are lengthening. Current average processing time for ABCMR cases received in FY 15 is 303 days (10 months), while the average processing time for ADRB cases received in FY 15 is 396 days (13 months). Through our business process reengineering, we've collected data

which helped the United States Army Manpower Analysis Agency to validate a requirement for 25 additional employees for the Army Board for Correction of Military Records, which will return us to our 2002 baseline. We are now working with the Army staff to authorize and hire the additional staff.

We continually look for ways to better serve the Soldiers, Veterans and Family members who apply to one of our boards. To this end, two years ago we made an agency policy change to hold cases open 90 days in order to secure corrections to deficient applications, rather than close and make applicants resubmit their application. Other changes include direct communication with applicants to clarify issues or request additional documentation to help their cases, as well as conducting periodic board member and Agency staff training on current service policies and procedures.

After a three year hiatus, the Army Review Boards Agency has reinstated its regional travel panels for the Army Discharge Review Board with the focus of providing more 'face-to-face' assistance to customers who cannot easily travel to the National Capital Region. We conducted the first travel panel at Robins Air Force Base, Georgia, in November 2016. Our next traveling panel will be at Joint Base San Antonio, Texas from 20 to 24 March, 2017. We plan to conduct these events quarterly around the United States in areas of highest applicant concentration.

We acknowledge the enhanced procedural and reporting requirements contained in the fiscal year 2017 NDAA and are working to implement those changes across the Agency.

Finally, as required by this year's NDAA, we expect the ABCMR to adjudicate approximately 870 California Army National Guard Incentive Recoupment cases that did not meet the waiver threshold. We fully expect to complete that adjudication by the end of July 2017, as required by law.

At the end of the day, the Army is about its people. The men and women who serve our Nation, along with their families, are our most important asset. The Army Review Boards Agency is one of the ways we take care of our most important asset. I thank all of you for your continued support of our All-Volunteer Army and the Army Review Boards Agency.

Francine C. Blackmon
Deputy Assistant Secretary of the Army (Review Boards)

Ms. Francine C. Blackmon was appointed as the Deputy Assistant Secretary of the Army (Review Boards) and Director of the Army Review Boards Agency (ARBA) on 15 December 2013. She is responsible for the operations of 14 Army personnel boards, including the Army Board for Correction of Military Records, the Army Discharge Review Board, the Army Special Review Boards, the Army Clemency and Parole Board, and the Army Grade Determination Review Board; and provides oversight of the Army's Law Enforcement and Corrections missions. Prior to her current assignment, she served as the Deputy Assistant Secretary, Air Force Management Integration.

Ms. Blackmon is originally from Sacramento, CA. Upon graduation from the University of Maryland, she was commissioned as an officer in the Air Force. Ms. Blackmon's 24-year military career was performed in the field of human resources. She served in such positions as the Chief of the Commander's Issues Team at the Air Force Personnel Center, Randolph AFB, TX; Mission Support Squadron Commander at Fairchild AFB, WA; and Chief of the Air Force Skills Management Division at Headquarters, US Air Force. Ms. Blackmon has extensive joint service experience including assignments in the Office of the Secretary of Defense, Under Secretary of Defense (Personnel and Readiness).

EDUCATION

Bachelor of Arts in Sociology, 1983, University of Maryland, College Park, MD
 Master of Science in Education, 1986, Troy State University, AL
 Master of Strategic Studies, 2003, Air War College, Maxwell AFB, AL

CAREER CHRONOLOGY

Oct 1983 - Apr 1986, Chief, Career Progression, Grissom AFB, IN
 Apr 1986 - Jul 1991, Chief, Consolidated Personnel Officer, Kadena Air Base, Japan
 Jul 1991 - Apr 1992, Executive Officer to the Commander, Air Education and Training Command, Randolph AFB, TX
 Apr 1992 - Jul 1996, Chief, Air Force Personnel Issues Team, Randolph AFB, TX
 Jul 1996 - Jun 1997, Student, Air Command and Staff College, Maxwell AFB, AL
 Jun 1997 - Jul 1999, Commander, Mission Support Squadron, Fairchild AFB, WA
 Jul 1999 - Jun 2002, Division Chief, Air Force Skills Management Branch, Deputy Chief of Staff for Personnel, Headquarters U.S. Air Force, Washington, DC
 Jun 2002 - Jun 2003, Student, Air War College, Maxwell AFB, AL
 Jun 2003 - Nov 2005, Military Assistant, Deputy Under Secretary of Defense for Military Personnel Policy, Washington, DC
 Nov 2005 - Jun 2007, Commander, Air Force Element, and Deputy Director, Office of Human Resources, National Reconnaissance Office, Chantilly, VA
 Dec 2007 - Jun 2012, Senior Adviser, Office of Human Resources, National Reconnaissance Office, Chantilly, VA
 Jun 2012 - Dec 2013, Deputy Assistant Secretary, Air Force, Force Management Integration, Washington, DC
 Dec 2013 – present, Deputy Assistant Secretary of the Army (Review Boards), Arlington, VA

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RELEASED BY THE HOUSE
COMMITTEE ON ARMED SERVICES

STATEMENT OF

MR. ROBERT WOODS

ASSISTANT GENERAL COUNSEL
FOR MANPOWER AND RESERVE AFFAIRS;

SENIOR LEGAL COUNSEL FOR THE
ASSISTANT SECRETARY OF THE NAVY FOR MANPOWER AND
RESERVE AFFAIRS

BEFORE THE

MILITARY PERSONNEL SUBCOMMITTEE
HOUSE COMMITTEE ON ARMED SERVICES

ON

REVIEW BOARD AGENCY

MARCH 2, 2017

NOT FOR PUBLICATION UNTIL
RELEASED BY THE HOUSE COMMITTEE ON
ARMED SERVICES

Good morning Chairman Coffman, ranking member Speier, and distinguished members of the House Armed Services Military Personnel Subcommittee. I'm Robert Woods, with the Department of the Navy. I'm the Assistant General Counsel for Manpower and Reserve Affairs; senior legal counsel for the Assistant Secretary of the Navy for Manpower and Reserve Affairs. On behalf of the men and women of the various Naval review boards, I thank you for the opportunity to appear before you today.

I note that your invitation describes this hearing as an "Overview of the Military Review Board Agencies." I also understand that you are particularly interested in reviewing our discharge review and upgrade processes, especially as they pertain to those petitions that involve Navy and Marine Corps Veterans who received other than honorable discharge characterizations and are victims of sexual assault during their service (Military Sexual Trauma or MST) and those suffering from service-connected Post-traumatic Stress Disorder (PTSD) or other service-connected or service-aggravated mental health problems.

Let me start by applauding your legislative efforts to insure that Veterans suffering from these various mental health problems receive the mental health treatment they deserve. I assure you that the leadership of the Department of the Navy is committed to assisting our present and former sailors and Marines with fair and open processes to make appropriate corrections to their military service records.

Overview of Department of the Navy Review Boards

The Secretary of the Navy, pursuant to authorities provided in Title 10 of the United States Code, has established the Board

for Correction of Naval Records (BCNR). The Secretary has also established various other review boards under the umbrella of the Council of Review Boards (CORB). The CORB Director oversees the efforts of the Naval Discharge Review Board (NDRB), the Physical Evaluation Board (PEB), the Combat-Related Special Compensation Board (CRSCB), the Naval Complaints Review Board (NCRB), the Naval Clemency and Parole Board (NCPB), the Navy Department's Board of Decorations and Medals (NDBDM), the Disability Review Board (DRB), and the Personnel Security Appeals Board (PSAB).

The Discharge Review Process

The BCNR and the NDRB, established pursuant to 10 U.S.C. §§ 1552 and 1553 respectively, are granted the authority to determine whether a Veteran's discharge was proper and equitable or warrants a change. Under the statutory scheme, the NDRB is the board of first resort for all discharges issued less than 15 years prior to the petition. Petitioners whose discharge was issued more than 15 years before their petition are referred to the BCNR. Additionally, petitioners may seek additional consideration of their petitions at the BCNR when they do not receive the relief they are seeking from the NDRB. Both the NDRB and the BCNR apply the same review standards for discharge upgrades and follow similar procedures for reviewing these petitions. Although it is the petitioner's responsibility in all cases to present all relevant evidence in support of their petitions, the staffs of both Boards go to considerable lengths to assist petitioners, especially in securing military service records and military and VA medical records.

Upon receipt of the Veteran's application, the NDRB will begin its preparation and document collection of the case by confirming the Veteran's eligibility for review; obtaining the Veteran's DD Form 214; assigning a case file number; logging the Veteran's information into a case-management system/database; and preparing a case file for a Document Review before a five-member Review Board. Generally, these steps take approximately 60-90 days. Most of this time is attributable to the time to obtain the Veteran's service and medical records from the United States Marine Corps/Navy automated repository system and medical treatment and clinical records from the Department of Veterans Affairs (DVA).

Following the document collection, the five-member board conducts a Documentary Record Review of the Veteran's military records and any materials provided to determine whether the evidence warrants a change of characterization to Honorable or General (Under Honorable Conditions). The criteria for determining discharge characterization are as follows. An Honorable characterization of service is warranted when the quality of a member's service generally meets the standard of acceptable conduct and performance for naval personnel, or is otherwise so meritorious that any other characterization of service would be clearly inappropriate. A General (Under Honorable Conditions) discharge is warranted when the quality of the member's service has been honest and faithful but significant negative aspects of the member's conduct or performance of duty outweighed the positive aspects of the member's service record. An Under Other Than Honorable Conditions discharge is warranted when a member engages in conduct involving one or more acts or omissions that constitute

a significant departure from the conduct expected of members of the Naval Service.

The Document Review phase averages about 120-150 days. Factors contributing to this part of the processing time include the volume of cases in progress; the volume of the Veteran's service and medical record; preparation of a detailed brief for the review board; the document review hearing; and finalizing a decisional document that conveys the findings and conclusions of the board. All petitions involving a claim of PTSD, Traumatic Brain Injury (TBI), or other mental health disorders receive priority consideration, are reviewed by a psychiatrist or clinical psychologist who also sits on the board, and are subject to liberal consideration.

Following a quality assurance review, the NDRB issues its written findings (Decisional Document) to the Veteran detailing the Board's findings and conclusions as well as any appeal rights. Finally, the NDRB will post a redacted version of the Decisional Document to the DOD Reading Room located at <http://boards.law.af.mil/NAVY DRB.htm>. The BCNR Reading Room is located at <http://boards.law.af.mil/NAVY BCNR.htm>.

The BCNR follows essentially the same administrative process described above with a few additional steps. The BCNR is the highest level of administrative review and only reviews discharge cases that involve discharges that occurred more than 15 years before the petition or those that have exhausted their review with the NDRB. If the BCNR receives an application that is missing substantial documentation to help support their case, BCNR notifies the individual of missing information and gives them 60 days to provide that information.

Additionally, the BCNR triages/prioritizes all cases involving invisible wounds, such as PTSD, MST, or mental health issues and orders an advisory opinion from a licensed psychiatrist. The psychiatrist advises on the issues of whether the medical documentation provided or obtained substantiates that the asserted condition existed at the time of service and, if so, whether there appears to be a nexus between the mental health condition and the misconduct presented in the discharge record. Once the advisory opinion is received, if negative to the member, the member is given 30 days to respond. All information gathered, including the OSD Policy guidance regarding liberal consideration for Veterans, is then presented to a 3-member panel of the BCNR. More specifically, in cases where there is a diagnosis of service-connected PTSD or where the Service records or any document from the period of service substantiate the existence of one or more symptoms of what is now recognized as PTSD or a PTSD-related condition during the time of service, the BCNR applies liberal consideration to finding that PTSD existed at the time of service. In such cases, the BCNR will also consider those conditions as potential mitigating factors in the misconduct that caused the discharge characterization.

The BCNR recently invited a psychiatrist to train the staff and Board members on what types of information to look for when reviewing PTSD or MST cases. The greatest challenge the staff and BCNR have is the lack of documentation provided or documented in the member's application or available records. If the application is denied, the decision memorandum sent to the member explains why the case was denied and gives them examples of the types of information that would be beneficial if they choose to resubmit their petition with new information.

Review Board Processing Statistics:

To provide an overall processing picture for the Department of the Navy's Review Boards, the following statistics are provided:

NDRB:

In Fiscal Year 2016, the NDRB completed 1163 adjudications and found that 151 [13 %] warranted an upgrade. The average processing times for these petitions was approximately nine months. Of those 1163 cases, 122 involved an Under Other Than Honorable Conditions (UOTHC) discharge coupled with a PTSD related claim of which 18 [15%] were upgraded. As of the end of the first quarter for Fiscal Year 2017, the NDRB has completed 457 adjudications and found that 29 [6%] warranted an upgrade. Of those 457 cases, 62 had a UOTHC discharge coupled with a PTSD related claim of which 3 [5%] were upgraded.

BCNR:

In Fiscal Year 2016, the BCNR completed 721 discharge characterization adjudications and found that 66 (9%) warranted an upgrade. The average processing times for these petitions was approximately six months. Of those, 554 (76%) involved an Under Other Than Honorable Conditions (UOTHC) discharge. Of these cases, 31 (6%) resulted in discharge characterization upgrades. Of the 554 UOTHC cases, only 83 (15%) included claims of PTSD of which 8 (9.6%) were granted discharge characterization upgrades. Finally, of the 554 UOTHC cases, only 4 (.072%) included claims of MST and none were granted discharge characterization upgrades. Although the grant rate for PTSD and MST cases receiving a UOTH characterization is slightly higher than other types of discharge cases, the grant

rate will likely continue to rise as the processes BCNR put into place weren't implemented until late 2016, and won't show up in data for a few more months.

Example Cases Showing a Basis for an Upgrade:

To better understand the decision-making process by the Department of the Navy's review boards, I present examples of a few actual cases where a board granted an upgrade and a few where they declined to grant an upgrade. I have omitted any personally identifiable information in order to preserve the Veterans' privacy.

Examples Granting Upgrade

1. A Marine Lance Corporal who deployed in 2004 in support of Operation IRAQI FREEDOM. He was found guilty by Summary Court Martial of using a controlled substance (marijuana) in January 2005, and was subsequently discharged with an Under Other Than Honorable discharge. The petitioner submitted a VA Compensation Letter evidencing PTSD. In this case, the Board relied upon the VA letter and gave liberal consideration that PTSD existed at the time of the drug use, and also gave liberal consideration that the PTSD potentially contributed to the drug use. The Board found that a General (Under Honorable Conditions) discharge was the more appropriate characterization.

2. A Marine Lance Corporal who deployed in 2008 in support of Operation IRAQI FREEDOM. In April 2010, he received non-judicial punishment for driving under the influence, but was retained for future military service. However, following his

use of a controlled substance (marijuana) one month later, he was convicted of that offense by summary court martial and subsequently discharged with an Under Other Than Honorable discharge. The petitioner's pre-discharge medical record included Post Deployment Health Reassessment documentation and cognitive testing with neurology notes and post-service medical documentation of a psychological evaluation including a diagnosis of PTSD. The Board applied liberal consideration of the medical evidence to find that PTSD existed during service and was a factor in the Marine's misconduct. As a result, the Board determined a General (Under Honorable Conditions) discharge was the more appropriate characterization.

3. Male Navy Corpsman deployed to Iraq as a Corpsman in 2006. He had no disciplinary infractions and excellent performance ratings. Upon his return, he was faced with the stress of his father's rapidly deteriorating health, pressure of Hospital Corpsman (HM) School, and stress disorder from Iraq. He started to use alcohol as a coping mechanism and one night when drunk admittedly used cocaine. He received non-judicial punishment (NJP) and went before an Administrative Discharge Board (ADB). Although the ADB voted to separate with an Other Than Honorable (OTH) characterization of service, the commanding officer (CO) believed that Post Traumatic Stress Disorder (PTSD) was the underlying cause of Sailor's issues. The Sailor was screened for PTSD but did not want to be diagnosed in fear of the stigma associated with PTSD and the possible removal from HM school. The CO recommended retention or at the least, a general under honorable conditions characterization of service (GEN). Both Navy Medicine Manpower and Navy Medicine Support Command concurred with the GEN characterization of service. Subsequently, the discharge authority directed an OTH in 2007.

Since his discharge in 2007, he was diagnosed with PTSD by the Department of Veterans Affairs and has a combined 100% disability rating. Navy Bureau of Medicine (BUMED) advisory opinion concurred that the PTSD contributed to misconduct and his request had merit. The Board granted relief and upgraded the discharge to Honorable.

Examples Denying Upgrade

1. A Marine Sergeant who deployed for six months in 2005 and for six months in 2008 in support of Operation IRAQI FREEDOM. In 2010, he was processed for separation as a result of an incident of illegal drug use but the separation was suspended for up to 12 months on the condition that he not engage in further misconduct. However, two months later he received non-judicial punishment for stealing copper gutters valued at approximately \$15,000 from a government building and then selling it to a private salvage facility. As a result, he was subject to an administrative discharge board, where he was represented by counsel. The discharge board found that he committed the offenses and voted 3-0 to separate with an Under Other Than Honorable discharge. In 2015, the Marine petitioned the Board and claimed his theft was a result of his PTSD. The petitioner was unable to present any medical evidence of PTSD or PTSD symptoms and none were evident in the Marine's medical records. In this case, the Board was unable to establish the existence of PTSD and found that the theft was pre-meditated and intentional. Therefore, the Board upheld the decision to characterize the Sergeant's discharge as Under Other Than Honorable Conditions.

2. Decorated Marine Viet Nam combat veteran served between 1968-1971 and received a General discharge for misconduct (all misconduct occurred after returning from Viet Nam). He asserted he was suffering from undiagnosed Post Traumatic Stress Disorder (PTSD) and requested that his discharge be upgraded. He provided no medical diagnosis and the review of his medical and Service records did not reveal any support for his assertion. He received three separate non-judicial punishments (absent from formation, not in proper uniform, disobeying lawful orders, and keeping a loaded weapon in his locker), two convictions by Summary Courts-Martial (sleeping on post, disrespect, disobeying a lawful order, and carrying a loaded weapon), and was ultimately separated with a General (under Honorable conditions) discharge. The Board denied relief as there was nothing to support or substantiate that PTSD existed. The final decision letter notified the petitioner that if he chooses to submit a request for reconsideration, he should include any medical, clinical, or other documentary evidence regarding PTSD triggering events and treatment, or other service related trauma.

3. Marine Viet Nam combat veteran served between 1969-1970 and received a General (under Honorable conditions) discharge for misconduct (all misconduct occurred in theater). He asserted he was suffering from undiagnosed Post Traumatic Stress Disorder (PTSD) and requested that his discharge be upgraded. He provided no medical diagnosis and his Navy records do not reveal anything that would support his assertion. He received 2 non-judicial punishments (violation of a lawful order, willful discharge of a firearm resulting in injury to a Vietnamese national, and unauthorized absence), 1 Summary Court-Martial (violation of a lawful order - possession of prohibited

stimulant and loitering at his post as a sentinel) and was separated with a General (under Honorable conditions) discharge. The Board denied relief as there was nothing to support or substantiate that PTSD existed. The final decision letter notified the petitioner that if he chooses to submit a request for reconsideration, he should include any medical, clinical, or other documentary evidence regarding PTSD triggering events and treatment, or other service related trauma.

Customer Service for our Veterans:

In an effort to expand our outreach to veterans, in FY16 the Department of the Navy developed a primer explaining the Naval Discharge Review Board process that is distributed to various Veterans Service Organizations. Additionally, both the BCNR and NDRB leadership have participated in multiple community outreach briefs in an effort to assist various Veteran Service Organizations advocate on behalf of our nation's veterans. The BCNR in collaboration with the Veterans Affairs hosted a Facebook event reaching out to veterans about discharges and VA benefits. These outreach efforts have been so successful, that the NDRB observed an 1,100 case increase in discharge review applications between Fiscal Year 2015 and Fiscal Year 2016. In the past year (FY16), the BCNR's total number of MST cases received (including those with General Discharge characterizations) have increased by 65% from 48(FY15) to 72(FY16) and PTSD cases (including those with General Discharge characterizations) have increased by 300% (from 96 to 475).

The NDRB is also deeply involved with its sister services review boards in developing a revision to the DD Form 293 (Application for Review of Discharge) with the intended goal of

making a "smart form" to assist the Veteran better clarify and support their claim(s). Additionally, both the BCNR and NDRB are working to develop a web-based case-management system that makes it easier for our veterans to submit their discharge upgrade requests, and for the Boards to process and track applications.

The NDRB has also successfully implemented the option of allowing a veteran to conduct their Personal Appearance Hearing telephonically rather than appear locally. The Boards have observed a positive reaction to telephonic hearings as evidenced by the near elimination of veterans who fail to appear at their hearing; a nearly 30 percent increase in requests for Personal Appearance Hearings; and what appears to be reduced anxiety by the veteran when participating in the Hearing.

Summary:

Mr. Chairman, serving in the all-volunteer Armed Forces is challenging, but reflects a commitment to our Nation; thus, our Marines and Sailors deserve to be properly recognized upon completion of their service. One of the ways in which our Marines and Sailors are recognized is through the determination of their characterization of service. As such, the Department of the Navy's Review Boards are committed to processing our veterans' request for a discharge review in a fair and timely manner.

Once again, I appreciate the opportunity to discuss the Department of the Navy's views on ensuring our former Marines and Sailors receive the recognition and benefits they deserve both while in service and upon discharge. This concludes my statement.

Robert L. Woods
Assistant General Counsel
(Manpower and Reserve Affairs)

Mr. Woods was appointed as Assistant General Counsel (Manpower and Reserve Affairs) on November 22, 2009. As AGC(M&RA), he is the legal advisor to the Secretariat for matters concerning military and civilian personnel policy, and he coordinates the efforts of Navy attorneys world-wide in administrative and federal court employment litigation. He was appointed as a member of the Senior Executive Service and as Special Counsel Litigation on June 21, 2009. As Special Counsel, he was responsible for the most important litigation matters under the cognizance of the General Counsel. He also supervises approximately 30 attorneys who represent the Navy on significant cases brought before U.S. Federal Courts and the Armed Services Board of Contract Appeals. Prior to his appointment as Special Counsel, he served as the Department of the Navy's Deputy Assistant General Counsel (Manpower and Reserve Affairs) from June 2007. Prior to this appointment, he served as Counsel for the Office of Civilian Human Resources (OCHR) from March 10, 2003. As OCHR Counsel he served as the principal legal advisor to the staff of the Deputy Assistant Secretary of the Navy (Civilian Human Resources), and the Director, OCHR. Prior to becoming OCHR Counsel, Mr. Woods served an Associate Counsel within the Office of the Assistant General Counsel (Manpower and Reserve Affairs), Department of the Navy. He has been employed by the Navy Office of General Counsel (OGC) since February 1999. Prior to his employment with the Navy, Mr. Woods was an Assistant Counsel handling labor and employment litigation with the General Services Administration and, prior to that, with the Department of Commerce.

Mr. Woods retired from the U.S. Air Force as a Lieutenant Colonel in February 1998, following 20 years of active duty. During his Air Force career, he was selected to attend law school under the Air Force Funded Legal Education Program. He graduated from Rutgers Law School in 1983 and was then admitted to practice law in Pennsylvania and New Jersey. Following assignments as an Assistant Staff Judge Advocate and Staff Judge Advocate, Mr. Woods was selected to attend Georgetown Law Center under another Air Force scholarship program. There he earned his LL.M. in Labor and Employment Law in 1989. Following assignments as a labor and employment trial attorney at Air Force Headquarters and Staff Judge Advocate at RAF Alconbury, UK, Mr. Woods concluded his career as the Chief of the Air Force Central Labor Law Office. During his Air Force career, Mr. Woods was awarded the Air Force Commendation Medal and the Meritorious Service Medal with four oak leaf clusters. He is also a graduate of the Air Force Squadron Officers' School, Air Command and Staff College, and Air War College.

Mr. Woods earned his bachelor's of science degree in psychology from King's College in Wilkes-Barre, PA and his master's of arts in human resources management from Pepperdine University in Malibu, CA.

House Armed Services Committee
Military Personnel Subcommittee
Hearing on Service Review Agencies,
Boards for Correction of Military Records/Discharge Review Boards

Air Force Witness:
Mr. Mark S. Teskey
Director, Air Force Review Boards Agency

Hearing Date: 2 Mar 2017

GOOD MORNING CHAIRMAN COFFMAN, RANKING MEMBER SPEIER. ON BEHALF OF THE MEN AND WOMEN OF THE AIR FORCE REVIEW BOARDS AGENCY, THANK YOU FOR THE OPPORTUNITY TO APPEAR BEFORE YOU TODAY.

AS DIRECTOR OF THE AIR FORCE REVIEW BOARDS AGENCY, I AM RESPONSIBLE FOR THE ADMINISTRATION, OVERSIGHT, AND LEADERSHIP OF TEN APPELLATE LEVEL ADMINISTRATIVE REVIEW BOARDS, EIGHT ON BEHALF OF THE SECRETARY OF THE AIR FORCE AND TWO ON BEHALF OF THE SECRETARY OF DEFENSE. OUR AGENCY RECEIVES APPROXIMATELY 15,000 CASES ANNUALLY FROM ACTIVELY SERVING AIRMEN (REGULAR AIR FORCE, AIR NATIONAL GUARD, AIR FORCE RESERVE, and CIVILIAN EMPLOYEES), VETERANS, AND THEIR FAMILIES. OUR NON-STATUTORY AIR FORCE BOARDS ADJUDICATE A WIDE VARIETY OF DECISIONS ON BEHALF OF THE SECRETARY OF THE AIR FORCE AND INCLUDE THE PERSONNEL BOARD, THE DECORATIONS BOARD, AND THE REMISSIONS BOARD. THIS LAST BOARD CONSIDERS THE REMISSION OF SERVICE MEMBER DEBTS. THE CLEMENCY AND PAROLE BOARD ASSISTS THE SECRETARY IN EXECUTING PAROLE, CLEMENCY, AND RETURN TO DUTY AUTHORITIES ESTABLISHED BY LAW. THE PERSONNEL SECURITY APPEAL BOARD, DIRECTED BY EXECUTIVE ORDER, ADJUDICATES APPEALS OF SECURITY ELIGIBILITY/CLEARANCE WITHDRAWALS.

TWO OF OUR MOST PROMINENT BOARDS, THE DISCHARGE REVIEW BOARD AND THE AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS ARE REQUIRED AND GOVERNED BY STATUTE. THE DISCHARGE REVIEW BOARD REVIEWS AN APPLICANT'S DISCHARGE AND MAY CHANGE THE CHARACTERIZATION OF SERVICE AND/OR THE REASON FOR THE DISCHARGE. THE AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS, A STATUTORY BOARD OF CIVILIANS, PROVIDES THE HIGHEST LEVEL OF ADMINISTRATIVE REVIEW AND HAS BROAD AUTHORITY TO CORRECT MILITARY RECORDS TO REMEDY AN ERROR OR INJUSTICE. FINALLY, WE MANAGE AND OVERSEE THE AIR FORCE CIVILIAN APPELLATE REVIEW OFFICE WHICH PROCESSES AND ADJUDICATES APPROXIMATELY A THOUSAND DISCRIMINATION COMPLAINTS PER YEAR FILED BY CIVILIAN EMPLOYEES AGAINST THE AIR FORCE.

THE DEPARTMENT OF DEFENSE PHYSICAL DISABILITY BOARD OF REVIEW AND THE DEPARTMENT OF DEFENSE CIVIL MILITARY SERVICE REVIEW BOARD SERVE ALL SERVICE MEMBERS: SOLDIERS, MARINES, SAILORS, AIRMEN, AND COAST GUARDSMEN. BOTH DOD BOARDS PROVIDE AN ADDITIONAL LEVEL OF REVIEW BEYOND THE SERVICE LEVEL. THE PHYSICAL DISABILITY BOARD OF REVIEW ENSURES FAIRNESS AND ACCURACY IN DISABILITY CASES WHERE THE SERVICE MEMBER RECEIVED A COMBINED DISABILITY RATING OF 20% OR LESS AND WAS DISCHARGED BETWEEN SEPTEMBER 11, 2001 AND DECEMBER 31, 2009.

THE CIVIL MILITARY SERVICE REVIEW BOARD DETERMINES IF CIVILIAN SERVICE IN SUPPORT OF THE U.S. ARMED FORCES DURING A PERIOD OF ARMED CONFLICT IS EQUIVALENT TO ACTIVE MILITARY SERVICE FOR VA BENEFITS. IN ALL CASES, I CAN CONFIDENTLY SAY THAT OUR APPELLATE VENUES PROVIDE FAIRNESS, EQUITY, DUE PROCESS AND JUSTICE FOR ALL OUR APPLICANTS.

THE AIR FORCE REVIEW BOARDS AGENCY STRIVES TO QUICKLY AND FAIRLY ADJUDICATE ITS CASES, HOWEVER, WE ARE FALLING BEHIND. OVER THE PAST 10 YEARS PARTS OF OUR BUSINESS MATERIALLY CHANGED. FOUR FACTORS SIGNIFICANTLY IMPACTED THE AIR FORCE REVIEW BOARDS AGENCY IN BOTH POSITIVE AND NEGATIVE WAYS: 1) OUR ORGANIZATIONAL TRANSFORMATION/MODERNIZATION TO SOLIDIFY PROCESSES, ESTABLISH METRICS, AND LEVERAGE TECHNOLOGY; 2) INCREASING CASELOADS/CASE COMPLEXITIES; 3) RESOURCE CONSTRAINTS; AND 4) LEGISLATIVE/REGULATORY CHANGES. IN 2011, THE SECRETARY OF THE AIR FORCE DIRECTED THE AIR FORCE REVIEW BOARDS AGENCY TO BEGIN AN EXTENSIVE TRANSFORMATION EFFORT. WE UPDATED ORGANIZATIONAL STRUCTURE, PROCESSES, AND PROCEDURES FOCUSING ON AN EFFICIENT AND EFFECTIVE ORGANIZATION. EACH OF THE AGENCY'S TEN BOARDS UNDERWENT A THOROUGH BUSINESS PROCESS REVIEW AND RE-ENGINEERING. WE ALSO RESTRUCTURED OUR ORGANIZATION TO CONSOLIDATE MISSION SUPPORT FUNCTIONS AND BETTER LEVERAGE LEGAL AND MEDICAL SUPPORT FOR ALL TEN AGENCY BOARDS THROUGH SHARED SERVICE MODELS. THIS PROVIDES A HIGHER LEVEL OF LEGAL AND MEDICAL EXPERTISE TO ACCOMMODATE ADDITIONAL LEGAL, MEDICAL AND MENTAL HEALTH REVIEWS FOR SPECIFIC CONDITIONS SUCH AS POST TRAUMATIC STRESS, TRAUMATIC BRAIN INJURY, AND SEXUAL ASSAULT. WE DEVELOPED PERFORMANCE ASSESSMENT FRAMEWORKS ACROSS EACH BOARD FUNCTION TO PROVIDE REAL TIME METRICS REPORTING AND TREND ANALYSIS, AND ENSURE TRANSPARENCY. WE ALSO DIGITIZED ALL TEN BOARDS, FROM CASE CREATION THROUGH RATIFICATION AND APPROVAL OF THE BOARDS' DECISIONS.

OUR TRANSFORMATION EFFORTS WERE LONG OVERDUE AND CREATED SIGNIFICANT CHALLENGES, BECAUSE THESE SWEEPING REFORMS WERE IMPLEMENTED WHILE CASE PROCESSING CONTINUED; NOT UNLIKE BUILDING AN AIRPLANE WHILE FLYING IT. THROUGHOUT THIS PERIOD WE DID NOT COMPROMISE QUALITY AND FAIRNESS, BUT IMPLEMENTING THESE PROCESS IMPROVEMENTS TEMPORARILY SACRIFICED PROCESSING TIME IN THE NEAR TERM, WITH THE AIM OF EXPANDING CAPACITY AND SHORTENING PROCESSING TIME, IN THE LONG TERM. WE'VE COMPLETED THIS PHASE OF OUR BUSINESS PROCESS RE-ENGINEERING AND INTEND TO CONTINUE ASSESSING AND RE-LOOK AT OUR PROCESSES WHERE IT MAKES SENSE.

WE QUICKLY REALIZED THE ADDITIONAL CAPACITY GENERATED BY OUR PROCESS IMPROVEMENTS WAS OUTPACED BY AN EVER INCREASING NUMBER OF APPLICATIONS, AND THOSE APPLICATIONS WERE INCREASINGLY COMPLEX.

THE NUMBER OF CASES IS INCREASING. CASES ARE ALSO INCREASING IN COMPLEXITY BECAUSE THE DOCUMENTATION SUBMITTED IS GROWING TREMENDOUSLY AND THE APPLICANTS OFTEN USE COMPOUNDED CONTENTIONS AND ALTERNATIVE ARGUMENTS. DUE TO THE EVER-EXPANDING TECHNICAL SAVVY OF OUR AIRMEN, APPLICANTS HAVE ACCESS TO A VAST ARRAY OF RESOURCES VIA THE INTERNET WHICH THEY OFTEN SUBMIT AS EVIDENCE IN THEIR CASE. EACH EXHIBIT AND EACH CONTENTION SUBMITTED REQUIRES METICULOUS

RESEARCH AND EXAMINATION BY THE STAFF WHICH SLOWS CASE PREPARATION. WHILE COGNIZANT OF THE FACT THAT OUR THOROUGH PROCESSES AND PROCEDURES ADD TO THE OVERALL PROCESSING TIME, WE ARE UNWILLING TO COMPROMISE THE THOROUGH EXAMINATION OF EACH EXHIBIT SUBMITTED OR EACH COMPLEX CONTENTION TO SIMPLY HURRY THEM TO CONCLUSION.

WE REQUESTED AN AIR FORCE MANPOWER ASSESSMENT IN 2013 TO DETERMINE IF SUFFICIENT RESOURCES WERE AVAILABLE TO PERFORM THE DUTIES REQUIRED OF OUR TEN BOARDS. THE ASSESSMENT REVEALED SIGNIFICANT HUMAN RESOURCE SHORTFALLS. IN THE AIR FORCE'S PROPOSED BUDGET FOR FISCAL YEAR 2018, WE INCLUDED 18 ADDITIONAL MILITARY ENLISTED BILLETS TO INCREASE STAFFING LEVELS. WE CONTINUE TO WORK ON IMPROVING OUR PROCESSES AND COORDINATING WITH AIR FORCE LEADERSHIP TO BALANCE OUR REQUIREMENTS WITH OTHER CRITICAL RESOURCE DEMANDS LIKE READINESS, TRAINING, SUSTAINMENT, AND MODERNIZATION.

WITH GROWING CASELOADS, INCREASED CASE COMPLEXITIES, AND LIMITED PROCESSING CAPACITY, OUR BOARDS EXPERIENCED SIGNIFICANT BACKLOGS WHICH FURTHER EXTENDED CASE ADJUDICATION TIMELINES. AS A RESULT, THE AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS HAS BEEN UNABLE TO COMPLY WITH CONGRESSIONALLY DIRECTED TIMELINES AS REQUIRED BY 10 U.S.C. §1557 FOR THE LAST THREE YEARS. THE SECRETARY HAS, AND WILL ONCE AGAIN, REPORT OUR NON-COMPLIANCE TO YOUR COMMITTEE IN JUNE. ACKNOWLEDGING THAT JUSTICE DELAYED IS JUSTICE DENIED, WE CONTINUE TO PURSUE WAYS TO MORE EFFICIENTLY REVIEW AND PROCESS THESE CASES SO THAT OUR APPLICANTS CAN RECEIVE TIMELY AND EQUITABLE RESULTS.

DURING THIS TURBULENT TIME, RECENT LEGISLATIVE AND REGULATORY CHANGES HAVE ALSO LEVIED ADDITIONAL RESPONSIBILITIES ON THE BOARDS. A PERFECT EXAMPLE IS CONGRESSIONAL EMPHASIS AND ACTION ON POST TRAUMATIC STRESS, TRAUMATIC BRAIN INJURY AND SEXUAL ASSAULT AND SIMILAR INJURIES. RECENT LEGISLATION REQUIRED THE DISCHARGE REVIEW BOARDS AND BOARDS FOR CORRECTION OF MILITARY RECORDS TO REVIEW AND CONSIDER UPGRADING THE DISCHARGE CHARACTERIZATION OF VETERANS WHO EXPERIENCED THESE CONDITIONS AND WERE SUBSEQUENTLY DISCHARGED WITH OTHER THAN HONORABLE DISCHARGES.

THE AIR FORCE DISCHARGE REVIEW BOARD AFFORDS FORMER AIR FORCE MEMBERS THE OPPORTUNITY TO HAVE THEIR DISCHARGE REVIEWED ON THE BASIS OF PROPRIETY AND EQUITY, WITHIN FIFTEEN YEARS OF DISCHARGE. ALL APPLICATIONS ARE SCREENED AND THOSE WITH QUALIFYING POTENTIAL MENTAL HEALTH CONDITIONS ARE REVIEWED BY ONE OF TWO STAFF PSYCHIATRISTS, IN ACCORDANCE WITH THE 2015 NDAA. THESE PSYCHIATRISTS ALSO SERVE AS VOTING MEMBERS ON THE DISCHARGE REVIEW BOARD FOR EACH CASE THAT HAS A CONFIRMED MENTAL HEALTH DIAGNOSIS DURING A PERIOD OF ACTIVE SERVICE. IN FY 2016, THE DISCHARGE REVIEW BOARD RECEIVED 655 CASES; 142 OF WHICH INCLUDED A MENTAL HEALTH DIAGNOSIS; AND 13 CASES HAD A SPECIFIC DIAGNOSIS OF POST TRAUMATIC STRESS.

DISCHARGE REVIEW BOARD APPLICANTS HAVE A STATUTORY RIGHT TO PERSONALLY APPEAR BEFORE THE BOARD. WE ENCOURAGE AND SEEK TO ENABLE THESE APPEARANCES THROUGH PERSONAL APPEARANCES AT HEADQUARTERS AND REGIONAL VIDEO TELECONFERENCES. IN FY 2016, THE BOARD CONDUCTED 96 PERSONAL APPEARANCE HEARINGS, 18 OF WHICH WERE VIA VIDEO TELECONFERENCE.

THE AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS REVIEWS APPEALS OF DISCHARGE REVIEW BOARD DECISIONS AND TAKES DIRECT APPLICATIONS FROM MILITARY MEMBERS WHO WERE SEPARATED FROM THE AIR FORCE AT LEAST 15 YEARS AGO. WHEN A CASE INVOLVES A MENTAL HEALTH CONDITION, THE APPLICANT OFTEN REQUESTS A DISABILITY RETIREMENT OR DISCHARGE IN LIEU AN ADMINISTRATIVE DISCHARGE. SOME APPLICANTS SEEK RECONSIDERATION OF THEIR UNDER OTHER THAN HONORABLE CONDITIONS DISCHARGE BECAUSE OF A POST TRAUMATIC STRESS OR RELATED DIAGNOSIS. MENTAL HEALTH-RELATED CASES ARE FORWARDED TO OUR STAFF PSYCHIATRIST FOR A COMPLETE RECORD REVIEW. THE PSYCHIATRIST THEN PREPARES A DETAILED WRITTEN ADVISORY FOR THE BOARD'S CONSIDERATION, BASED ON THE INFORMATION AVAILABLE IN THE RECORD. THE ADVISORY OPINION IDENTIFIES AND DISCUSSES ANY NEXUS BETWEEN MENTAL HEALTH DIAGNOSES AND MISCONDUCT, IN ACCORDANCE WITH OSD AND AIR FORCE GUIDANCE ON LIBERAL CONSIDERATION. THIS ADVISORY OPINION AND THE OSD AND AIR FORCE GUIDANCE ARE SERVED ON THE APPLICANT TO GIVE THEM AN OPPORTUNITY TO PROVIDE ADDITIONAL COMMENTS AND/OR EVIDENCE IN SUPPORT OF THEIR CASE. ALL MATERIALS ARE THEN FORWARDED TO THE BOARD FOR ADJUDICATION. THESE IMPORTANT STEPS ENSURE THE APPLICANT HAS THE BEST OPPORTUNITY FOR THE FAIREST OUTCOME – BUT THEY ALSO INCREASE PROCESSING TIMES.

I MUST EMPHASIZE THAT THE BOARD FOR CORRECTION OF MILITARY RECORDS DOES NOT RESERVE ITS REQUESTS FOR ADVISORY OPINIONS SOLELY FOR DISCHARGE UPGRADES OR MENTAL HEALTH CASES. THE BOARD REQUESTS ADVISORIES IN MORE THAN 95 PERCENT OF THE CASES IT RECEIVES. ADVISORIES ARE OFTEN DRAFTED BY THE OFFICE OF PRIMARY RESPONSIBILITY FOR THE POLICY THAT APPLIES TO THE SPECIFIC ISSUE RAISED BY THE APPLICANT. OUR STAFF GATHERS AS MANY RECORDS AS PRACTICAL FROM PERSONNEL DATABASES, THE NATIONAL PERSONNEL RECORDS CENTER, AND/OR THE NATIONAL ARCHIVES AND RECORDS ADMINISTRATION TO ENSURE COMPLETE DOCUMENTATION IS AVAILABLE FOR ADJUDICATION. THE LEAD TIME TO ASSEMBLE THESE DOCUMENTS CERTAINLY ADDS TO THE TIME IT TAKES TO ADJUDICATE THE CASES. OUR PROCESS AFFORDS EACH APPLICANT A MINIMUM OF 30 DAYS TO REVIEW WHAT THE BOARD CONSIDERS AND ALLOWS THE APPLICANT AN OPPORTUNITY TO REBUT THE ADVISORY'S CONTENTS AND SUBMIT ADDITIONAL INFORMATION. THE ENTIRE CASE FILE, ALONG WITH THE APPLICANT'S REBUTTAL, IS SENT TO THE BOARD A WEEK BEFORE THE BOARD MEETS. WE CONSISTENTLY FOLLOW THIS PROCESS TO ADHERE WITH ADMINISTRATIVE LAW PRINCIPLES AND TO CREATE A REGULAR, FAIR, TRANSPARENT PROCESS.

THERE IS NO STATUTORY RIGHT TO APPEAR PERSONALLY BEFORE THE BOARD FOR CORRECTION OF MILITARY RECORDS. REQUESTS TO APPEAR ARE CONSIDERED BY A THREE PERSON PANEL COMPRISED OF SENIOR AIR FORCE CIVILIANS IN THE SENIOR EXECUTIVE SERVICE OR MINIMUM GRADE OF GS-15. OUR CIVILIAN PANEL MEMBERS ARE ALL VOLUNTEERS. THE PANEL MAY PERMIT THE APPLICANT TO APPEAR IN PERSON, WITH OR WITHOUT COUNSEL, IF IT WOULD MATERIALLY ADD TO ITS UNDERSTANDING OF THE ISSUES INVOLVED. PERSONAL APPEARANCES ARE RARELY NECESSARY.

OVER THE PAST 5 YEARS, THE AIR FORCE DISCHARGE REVIEW BOARD HAS RECEIVED MORE THAN 600 CASES ANNUALLY. AS A REMINDER, THIS BOARD LOOKS SOLELY AT DISCHARGE UPGRADES WHERE THE VETERAN AIRMAN RECEIVED A LESS THAN HONORABLE DISCHARGE. THE DISCHARGE REVIEW BOARD REVIEWS THESE CASES WITHIN 15 YEARS OF SEPARATION.

THE AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS RECEIVES WELL OVER 5,000 CASES ANNUALLY PERTAINING TO THE GAMUT OF FORCE MANAGEMENT ISSUES CONFRONTING CURRENT AND FORMER MEMBERS OF OUR REGULAR, GUARD, AND RESERVE COMPONENTS. THE AIR FORCE RESOLVES APPROXIMATELY HALF OF THESE APPLICATIONS ADMINISTRATIVELY THROUGH THE PERSONNEL FUNCTION WITHOUT REFERRAL TO THE BOARD BECAUSE THERE IS AN ERROR IN THE RECORD THAT CAN BE FIXED. THE OTHER HALF OF THE APPLICATIONS ARE FORWARDED FOR ADJUDICATION BY THE FULL BOARD.

I OUTLINED FOUR SPECIFIC EXTERNAL FACTORS THAT IMPACTED OUR ABILITY TO PROCESS CASES IN A TIMELY MANNER. EACH OF THESE FACTORS PLACED INCREASED DEMANDS ON OUR AGENCY AND ITS ABILITY TO PROVIDE PROMPT RELIEF WHEN AND WHERE WARRANTED. WE ARE DOING ALL WE CAN INTERNALLY TO SECURE THE NECESSARY RESOURCES TO MORE EFFECTIVELY PERFORM OUR STATUTORY AND REGULATORY DUTIES. WE ARE ACUTELY AWARE THAT AT THE END OF EVERY ONE OF OUR NEARLY 15,000 CASES EACH YEAR, THERE IS AN AIRMAN, A VETERAN, OR FAMILY MEMBER WHO IS AWAITING A DECISION. WE ARE DEDICATED TO THESE PEOPLE AND STRIVE DAILY TO PROVIDE FAIRNESS, EQUITY, DUE PROCESS AND JUSTICE TO ALL OUR APPLICANTS.

MR. CHAIRMAN, I THANK YOU AGAIN FOR THE OPPORTUNITY TO APPEAR BEFORE THIS COMMITTEE AND LOOK FORWARD TO YOUR QUESTIONS.

Mark S. Teskey
Director, Air Force Review Boards Agency

Mr. Mark S. Teskey, a member of the Senior Executive Service, is the Director, Air Force Review Boards Agency, Office of the Secretary of the Air Force for Manpower and Reserve Affairs, Washington, D.C. He is responsible for the management and operations of the Air Force Personnel Council, Air Force Board for Correction of Military Records, Air Force Civilian Appellate Review Office, Air Force Personnel Security Appeal Board and the Department of Defense Physical Disability Board of Review.

Mr. Teskey entered the Reserve Officer Training Corps at Clemson University and was commissioned upon graduation in 1986. He entered the Educational Delay program, attended the University of South Carolina School of Law, and was accepted into the Air Force Judge Advocate General's Corps in 1989. Prior to this position, he was the Director of the Air Force Small Business Programs. He served as a civil servant in the Department of the Interior as the Associate Solicitor for General Law and as the Director, Office of Small and Disadvantaged Business Utilization.

Mr. Teskey served over 23 years in the Air Force Judge Advocate General's Corps specializing in Government Acquisition Law and National Security issues prior to joining the Department of the Interior. His final active duty assignment was as the Director of Commercial Law and Litigation for the Air Force, building a worldwide organization to represent Air Force acquisition law and litigation interests from an enterprise perspective in the acquisition law, litigation, and personnel policy areas. He served in a wide variety of base and headquarters level leadership positions. He assumed his current position in December 2016.

EDUCATION

1986 Bachelor of Arts, Clemson University
 1988 Juris Doctor, University of South Carolina School of Law, Columbia, S. C.
 1999 Master of Law, Public Contract Law Specialty, The Army Judge Advocate General's School
 2000 Air Command and Staff College, by correspondence
 2006 Air War College, by correspondence

CAREER CHRONOLOGY

1. October 1989 – August 1992, Assistant Staff Judge Advocate, Elmendorf AFB, Alaska.
2. August 1992 – September 1994, Acquisition Attorney, Air Force Materiel Command Law Office, Wright-Patterson AFB, Ohio.
3. September 1994 – August 1998, Chief Counsel DoD Health Services Region IV, Keesler AFB, Mississippi.
4. August 1998 – May 1999, Graduate Law Student, The Judge Advocate General's School of the Army, Charlottesville, Virginia.
5. June 1999 – June 2000, Trial Attorney, Air Force Legal Services Agency, Commercial Litigation Division, Arlington, Virginia.
6. June 2000 – June 2001, Executive to the Commander, Air Force Legal Services Agency, Bolling AFB, D.C.
7. June 2001 – June 2004, Staff Judge Advocate, Arnold Engineering Development Center (AEDC), Air Force Materiel Command, Arnold AFB, Tennessee.
8. July 2004 – July 2005, Staff Judge Advocate, 379th Air Expeditionary Wing, Al Udeid AB, Qatar.
9. August 2005 – June 2007, Staff Judge Advocate, 28th Bomb Wing, Ellsworth AFB, South Dakota.
10. June 2007 – August 2008, Staff Judge Advocate, Air Reserve Personnel Center, Denver,

Colorado.

11. August 2008 – July 2010, Staff Judge Advocate, HQ Air Force Office of Special Investigations, Andrews AFB, Maryland.

12. July 2010 – October 2012, Director, Commercial Law & Litigation, AF/JAQ, Arlington, Virginia.

13. November 2012 – November 2013, Associate Solicitor for General Law, Office of the Solicitor, The Department of the Interior, Washington, D.C.

14. November 2013 – April 2014, Director, Office of Small and Disadvantaged Business Utilization, Office of the Secretary, The Department of the Interior, Washington, D.C.

15. April 2014 to March 2017, Director, Air Force Small Business Programs, Office of the Secretary of the Air Force, Washington, D.C.

16. December 2016 to Present, Director, Air Force Review Boards Agency, Office of the Secretary of the Air Force for Manpower and Reserve Affairs, Washington, D.C.

AWARDS AND HONORS

Decoration for Exceptional Civilian Service

Legion of Merit (with 1 oak leaf cluster)

Defense Meritorious Service Medal

Meritorious Service Medal (with 4 oak leaf clusters)

PROFESSIONAL MEMBERSHIPS AND ASSOCIATIONS

United States Supreme Court

United States Court of Appeals for the Federal Circuit

United States Court of Federal Claims

United States Court of Appeals for the Armed Forces

Supreme Court of South Carolina

(Current as of January 2017)

**WITNESS RESPONSES TO QUESTIONS ASKED DURING
THE HEARING**

MARCH 2, 2017

RESPONSE TO QUESTION SUBMITTED BY MR. COFFMAN

Ms. BLACKMON. The Army Review Boards Agency (ARBA) does have feedback mechanisms to inform the Army of common personnel record errors. Since ARBA is assigned to the Assistant Secretary of the Army for Manpower and Reserve Affairs (ASA (M&RA)), we have direct access to the personnel policy makers for the Army on a weekly, if not daily, basis. Additionally, ARBA's mission has a direct relationship with the Army G-1, the Human Resources Command (HRC), the Office of The Surgeon General, the Office of the General Counsel, and the Office of The Judge Advocate General. Accordingly, ARBA has frequent dialogue, meetings, and policy discussions with each of these offices, since many of our cases originate with them and/or ARBA works closely with the organizations for advisory opinions. Therefore, it is common practice to share with each of these organizations reoccurring personnel record errors that can be corrected through policy, procedures, and command guidance. [See page 21.]

RESPONSE TO QUESTION SUBMITTED BY MS. TSONGAS

Mr. WOODS. The Department of the Navy (DON) Boards change and will continue to change the narrative reason for discharge to "Secretarial authority" in petitions where there's sufficient evidence that the person doesn't actually have a personality disorder. We have and will continue to apply the SECDEF Hagel memorandum standard of "liberal consideration" to invisible wound cases (MST/PTSD). This memorandum was dated 3 Sept 2014, Subject: "Supplemental guidance to Boards concerning veteran's claims to PTSD disorder." In FY16, the Naval Discharge Review Board (NDRB) adjudicated five petitions in which the Petitioner reported having been the victim of MST and had been issued a DD214 annotated with a narrative reason of "personality disorder." The NDRB changed this narrative to "Secretarial authority" in the two petitions that presented evidence that the Petitioner did not have a personality disorder. All five of these petitioners were reviewed by trained medical personnel (Psychiatrist or Clinical Psychologist) and the medical evidence in the three petitions that were denied contained evidence that supported the original narrative reason. Following the hearing before the Subcommittee, the Director of the Board for Correction of Naval Records, on her own initiative, ordered a review of previously adjudicated petitions that requested a change of the narrative reason of "personality disorder." This review identified eleven cases in which the Petitioner reported having been the victim of MST. The Director reviewed these cases and determined that the panels that had decided those cases did not appear to have properly applied the standard of "liberal consideration." Therefore, she directed that these cases be re-adjudicated by new panels with proper instruction on the standard of "liberal consideration." As a result, all eleven petitions were granted a change of the narrative reason for discharge to "Secretarial authority." In addition, the Board's professional staff received refresher training on the standards for assessing these types of petitions. Finally, it should be noted that the DON is working with DOD Separation Standardization Working Group reviewing DOD Non-Disability Mental Condition Separations. This group is, among other things, reviewing whether to retire many of the specific non-disability mental health separation program designator codes that drive the narrative reasons in block 28 of the DD Form 214, such as personality disorder. [See page 13.]

QUESTIONS SUBMITTED BY MEMBERS POST HEARING

MARCH 2, 2017

QUESTIONS SUBMITTED BY MS. TSONGAS

Ms. TSONGAS. Statutory deadlines requiring the BCMRs to complete 90 percent of their cases within 10 months create enormous pressure to move cases quickly. Moreover, as the forces downsize, the expected caseloads for the boards may increase. Yet over the past decade staffing for the boards has stayed the same or decreased.

a. What is the scope of the resource challenge that you face and how might Congress help? b. Without increased staffing, how can you ensure that cases are adequately reviewed, records are collected, and that veterans' claims are given full and fair consideration?

Ms. BLACKMON. a. Through the Army Review Boards Agency (ARBA) business processing reengineering efforts, we have collected data which helped the United States Army Manpower Analysis Agency to validate a requirement for 25 additional employees, which will return the agency to the 2002 baseline. ARBA is working with the Army Staff to authorize and hire additional staff.

b. As cases have become more complex, processing times are lengthening. However, the agency focus remains on giving each applicant's claim full and fair consideration while providing determinations in a timely manner, within current case processing capacity. We expect that our business process reengineering and leveraging new technologies will allow for more efficient and timely processing of cases.

Ms. TSONGAS. We know that PTSD is more prevalent among sexual assault survivors than among combat veterans: an estimated one in three sexual assault survivors experience PTSD, as opposed to a 10 to 18 percent prevalence rate of PTSD for combat veterans. Because the vast majority of sexual assault survivors do not report that they were victimized, however, they may not have been formally diagnosed with PTSD while in service. Accordingly, how do you intend to ensure that the protections for former service members diagnosed with PTSD in the NDAA for FY 2017 are also extended to victims of sexual assault?

Ms. BLACKMON. The Army Review Boards Agency provides special processing for cases in which the applicant contends they were a victim of sexual assault. ARBA recognizes that many of these assaults were never reported to military law enforcement, meaning there is no corroborating police report for the board to consider. Similar to ARBA processing of PTSD claims, the applicant is asked to provide any additional documentation they have related to their claim while their case is placed on administrative hold. Each case is reviewed by the psychiatrist or psychologist on the ARBA staff and they either participate as a board member or provide an advisory opinion for board consideration. In compliance with applicable law, any written advisory opinion they render is provided to the applicant for review and response prior to consideration. In the fall of 2016, all agency personnel were trained on markers of sexual trauma by a renowned forensic psychologist and were briefed by a panel of sexual assault survivors on the impact to them as sexual assault victims. This training is in addition to the statutory requirement for advisory opinions or serving board members as described above.

Ms. TSONGAS. Federal regulations require the BCMRs and DRBs to make all their decisions publicly available. Moreover, decisions are required to be indexed "in a usable and concise form so as to enable the public to identify those cases similar in issue together with the circumstances under and/or reasons for which the board and/or Secretary have granted or denied relief." In this way, applicants and their lawyers should be able to search for cases to determine applicable standards and present their arguments accordingly. However, in reality, the reading rooms are very basic, consisting of a list of case numbers. Except for the Coast Guard, which has a bare-bones indexing system, none of the services indexes its cases at all.

a. What constraints prevent the boards from indexing and summarizing case decisions? b. Why do each of the services use different computer systems for maintaining its records? Why wouldn't it be more efficient and cost effective to consolidate data systems?

Ms. BLACKMON. a. The Army Review Boards Agency posts redacted versions of the records of proceeding or the case report and directives that provide a summary for applications considered by the Army Board for Correction of Military Records and the Army Discharge Review Board respectively. The documents are posted quarterly and organized by year and case number. The advance search feature of the reading room support a basic word search of the documents. Efforts to go back and modify over 111,000 documents would require significant, intensive manpower efforts; however, going forward we will overhaul search functionality, and enhance user experience through intuitive interface and instructional content.

b. ARBA currently uses a case tracking system specifically developed for Army Review Boards Agency requirements. As a part of the agency's business process re-engineering, requirements are being identified for a replacement system that meets the unique future needs of the Army Review Boards Agency. This review will certainly provide the opportunity for the Army to consider the "consolidated data systems" approach.

Ms. TSONGAS. Statutory deadlines requiring the BCMRs to complete 90 percent of their cases within 10 months create enormous pressure to move cases quickly. Moreover, as the forces downsize, the expected caseloads for the boards may increase. Yet over the past decade staffing for the boards has stayed the same or decreased.

a. What is the scope of the resource challenge that you face and how might Congress help? b. Without increased staffing, how can you ensure that cases are adequately reviewed, records are collected, and that veterans' claims are given full and fair consideration?

Mr. WOODS. While we have complied with the mandate contained in 10 U.S.C. § 1559 to maintain or exceed our staffing levels on hand in 2002, we realize that without continued efforts to increase the number and quality of staff and to improve our technology support protocols, we will not be able to meet the statutory deadline goals for processing petitions. In that regard, we have programmed for additional staff in the coming Fiscal Years and are in the process of upgrading our technological capabilities. Our workload has increased significantly in the intervening years since 2002 in terms of the number of cases received, complexity of cases, as well as an exponential increase in FOIAs, phone calls, emails, constituent Congressional inquiries, and the like. With continued growth in cases, it will continue to be difficult to meet the 90 percent goal in the near term. We are hopeful that we will eventually be able to routinely meet this goal as we increase our staffing levels and finalize our technological improvements. We remain committed to providing our Sailors, Marines and veterans with full and fair consideration of their petitions in as timely a manner as possible.

Ms. TSONGAS. We know that PTSD is more prevalent among sexual assault survivors than among combat veterans: an estimated one in three sexual assault survivors experience PTSD, as opposed to a 10 to 18 percent prevalence rate of PTSD for combat veterans. Because the vast majority of sexual assault survivors do not report that they were victimized, however, they may not have been formally diagnosed with PTSD while in service. Accordingly, how do you intend to ensure that the protections for former service members diagnosed with PTSD in the NDAA for FY 2017 are also extended to victims of sexual assault?

Mr. WOODS. The Department of the Navy is currently working with the Office of the Secretary of Defense in development of supplemental guidance related specifically to sexual assault and sexual harassment cases. We anticipate guidance by this summer. In the meantime, we generally apply the SECDEF Hagel memorandum standard of "liberal consideration" to these invisible wound cases. This memorandum was dated 3 Sept 2014, Subject: "Supplemental guidance to Boards concerning veteran's claims to PTSD disorder." We also seek advisory opinions whenever there is evidence in the record, or a reference by the veteran, to sexual assault or harassment. We have an ongoing commitment to our veterans who have suffered invisible wounds.

Ms. TSONGAS. Federal regulations require the BCMRs and DRBs to make all their decisions publicly available. Moreover, decisions are required to be indexed "in a usable and concise form so as to enable the public to identify those cases similar in issue together with the circumstances under and/or reasons for which the board and/or Secretary have granted or denied relief." In this way, applicants and their lawyers should be able to search for cases to determine applicable standards and present their arguments accordingly. However, in reality, the reading rooms are very basic, consisting of a list of case numbers. Except for the Coast Guard, which has a bare-bones indexing system, none of the services indexes its cases at all.

a. What constraints prevent the boards from indexing and summarizing case decisions? b. Why do each of the services use different computer systems for maintaining its records? Why wouldn't it be more efficient and cost effective to consolidate data systems?

Mr. WOODS. The Board for Correction of Naval Records is currently developing a website that will allow indexing of summarized cases and enhanced search capabilities.

Ms. TSONGAS. Statutory deadlines requiring the BCMRs to complete 90 percent of their cases within 10 months create enormous pressure to move cases quickly. Moreover, as the forces downsize, the expected caseloads for the boards may increase. Yet over the past decade staffing for the boards has stayed the same or decreased.

a. What is the scope of the resource challenge that you face and how might Congress help? b. Without increased staffing, how can you ensure that cases are adequately reviewed, records are collected, and that veterans' claims are given full and fair consideration?

Mr. TESKEY. a. What is the scope of the resource challenge that you face and how might Congress help? The scope of the resource challenge the Air Force Review Boards Agency (AFRBA) faces is substantial. According to a 2013 manpower assessment, updated in 2015, the AFRBA is manned at 49 percent against validated requirements. While the agency is currently authorized 107 positions, the assessment indicated that 218 positions are required to keep pace with the current workload, resulting in a shortfall of 111 positions. This shortfall is predominantly attributable to the dramatic increase in caseloads across the agency over the last several years. In 2008, the agency received over 9,100 cases; however, in subsequent years, cases received increased over 70 percent to more than 15,600 cases annually. These shortfalls dramatically impact the ability of all of our boards to ensure that all petitions receive full and fair consideration while also complying with statutory and regulatory timelines for adjudication. This is most acute in the Air Force Board for Correction of Military Records (AFBCMR) where Title 10, U.S.C., Section 1557 requires the AFBCMR to adjudicate 90 percent of cases received during a fiscal year (FY) within ten months of receipt, with no individual case exceeding 18 months. The 90 percent requirement became effective for cases received during FY11. The AFBCMR adjudicated 96 percent of the nearly 2,400 cases received in FY11 within 10 months. For cases received during FY12, the last time we were able to comply with this mandate, the AFBCMR adjudicated 92 percent of over 2,900 cases received in FY12, an increase of more than 500 cases for adjudication than in the previous FYs. With 2,900 cases received for adjudication becoming the new normal, and with no requisite increase in staffing, the average age of a case at closure grew to ten months for cases received during FY13. As a result, the Board was only able to adjudicate 52.5 percent of almost 2,900 cases received during FY13 within ten months. The average age of a case at closure continued to climb, resulting in the Board adjudicating only 27.5 percent of the approximately 2,900 cases received in FY14 within ten months. The Secretary of the Air Force issued reports to Congress required by 10 USC 1557 for cases received in FY13 and FY14 and will issue a similar report this summer describing our inability to comply with the 90 percent mandate for cases received during FY15. We expect the reported compliance rate will continue to drop into the foreseeable future. Because individual board shortfalls, such as in the AFBCMR, can affect operations across the entire Agency, it's also important to consider manpower requirements in the AFRBA's other major boards. For example, neither the AF Discharge Review Board (AFDRB) nor other SAF Personnel Council (SAFPC) boards have the same statutory completion and reporting requirements as the AFBCMR. Nonetheless, the increasing case intake has the impact of creation of case load backlog and its nexus to critical staffing shortages is similar across the agency. Due to the existing manpower and increasing workload challenges, over the past several years, the AFRBA underwent an extensive transformation effort performing business process re-engineering across doctrine, organization, training, material, leadership, personnel, facilities, and policy domains. These efforts resulted in numerous efficiency and effectiveness improvements including streamlining and digitizing all adjudication processes, Agency-wide organizational structure changes, and development of shared-service model directorates to share limited specialized and common resources such as doctors, lawyers, and case intake personnel. These improvements have provided some offsets to our manpower and caseload issues but have not resolved them. Anecdotally, these changes lead us to believe we remain substantially under-resourced but we could operate at a manpower level slightly less than the 2015 Manpower Assessment requirement, but still above what is currently resourced. As such, Congress can help address the resource challenges by directing a new manpower study to accurately measure service review agency manpower re-

quirements and by regularly updating the personnel baseline found in 10 USC 1559(b).

b. Without increased staffing, how can you ensure that cases are adequately reviewed, records are collected, and that veterans' claims are given full and fair consideration? Without increased staffing, we accomplished extensive business process re-engineering to help mitigate our resulting case adjudication issues and help ensure cases are adequately reviewed, records collected and veteran's and current service member claims are given full and fair consideration. However, due to increased caseloads (caused by growing applications and an increase in the complexity of the cases submitted often including multiple requests and issues with more supporting documentation), without a corresponding increase in manpower, we can only fully ensure full and fair consideration to our veterans and service members with a corresponding increase in case processing times, often in non-compliance with congressional direction.

Ms. TSONGAS. We know that PTSD is more prevalent among sexual assault survivors than among combat veterans: an estimated one in three sexual assault survivors experience PTSD, as opposed to a 10 to 18 percent prevalence rate of PTSD for combat veterans. Because the vast majority of sexual assault survivors do not report that they were victimized, however, they may not have been formally diagnosed with PTSD while in service. Accordingly, how do you intend to ensure that the protections for former service members diagnosed with PTSD in the NDAA for FY 2017 are also extended to victims of sexual assault?

Mr. TESKEY. The AFRBA makes a concerted effort to ensure the liberal consideration provisions in the FY 2017 NDAA are afforded to both combat veterans and victims of sexual assault. The Agency is aware that many sexual assault survivors may not report an incident for fear of reprisal, embarrassment, or an attempt to blame the victim. There are still others who may exhibit an overt mental impediment to duty and proceed to complete their term of service, only to develop delayed post-service symptoms of PTSD. Consequently, the Agency considers the probative value of post-service examinations and disclosures made to Department of Veterans Affairs (DVA) medical officials, or other civilian medical sources, in assuring a fair and equitable opportunity for redress is offered. Close scrutiny of administrative records and performance reports is made in search of signs of unexplained diminution of performance or commission of minor disciplinary infractions in a previously exceptional performer. As a preventive measure in future cases, the Air Force Surgeon General has also established policy that will ensure all female service members are screened on the subject of possible military sexual trauma (MST) before clearance for separation for any reason to assure the possible existence of MST has been taken into consideration prior to a final personnel decision or action; whether a voluntary early separation, completion of required active service, or an involuntary separation. The Secretary of the Air Force recently issued written guidance on invisible wounds and sexual assault to the AFBCMR, which adjudicates the vast majority of these petitions. This guidance ensures we make a concerted effort to obtain copies of military personnel and service treatment records from the National Personnel Records Center (NPRC), as well as any post-service treatment records from the DVA. The Secretary's guidance directs the Board to apply liberal consideration of PTSD in discharge upgrades for both sexual assault victims and combat veterans in accordance with the Secretary of Defense guidance issued in 2014. The Board follows Title 10, U.S.C., Section 1552(g) and requires a written opinion from a staff psychiatrist in cases relating to a mental health diagnosis rendered during military service. We also obtain mental health opinions even when the diagnosis is made years after discharge when the case qualifies for liberal consideration of PTSD. The AFDRB strictly follows the requirements prescribed in Title 10, U.S.C., Section 1553 and includes a board member who is one of our staff psychiatrists when reviewing cases related to a mental health disorder diagnosed during military service or PTSD or TBI diagnosed on active duty as a consequence of a contingency deployment. We also ensure liberal consideration of PTSD is applied to both sexual assault victims and combat veterans in accordance with the recently enacted provisions of the Fiscal Year 2017 National Defense Authorization Act. In all cases where MST, PTSD, TBI or a Mental Health (MH) condition is either diagnosed or contended, a one of our staff psychiatrists thoroughly reviews the applicants medical records and is a voting panel member. Under the guidelines of the 2014 NDAA and updated by the 2016 NDAA, the AFDRB gives express liberal consideration and full acknowledgment to all diagnoses and contentions during deliberation. If a nexus between the conditions/situations and the misconduct can be garnered, it is fully adjudicated within these NDAA guidelines and constraints. The AFDRB recognizes that an applicant may not have reported being a victim of MST during service. The AFDRB will ensure that any undocumented contention regarding MST will the same scrutiny and consider-

ation of a documented MST. The AFDRB has also implemented reporting procedures for applicants that have not previously reported being a victim of MST. The PDBR reassesses the accuracy and fairness of the disability ratings assigned to Veterans who were separated from the Armed Forces due to unfitness between 11 September 2001 and 31 December 2009, with a combined disability rating of 20% or less and were not found to be eligible for retirement. The PDBR has two additional permanent civilian psychiatrists assigned as adjudicators who review all cases with PTSD as the unfitting condition. (The PDBR psychiatrists are in addition to those supporting the AFBCMR and AFDRB.) To date, the PDBR has adjudicated over 10,500 applications, 457 of the cases adjudicated were veterans separated with PTSD, of which 21 were the victims of sexual assault. In 78% of those PTSD cases adjudicated, the Board recommended increase in assigned disability ratings that resulted in change of the disability discharges to disability retirement, retroactive to the original date of separation. In June 2012, the Secretary of Defense committed the PDBR to a comprehensive review for Veterans whose PTSD and other mental health diagnoses may have been changed to their possible disadvantage or eliminated during the military Disability Evaluation System process. In March 2013 notification letters were mailed to 8,900 former service members resulting 1,185 applications. The PDBR determined inappropriate change in diagnoses were made in 12% of those cases reviewed and recommended corrective actions to the military departments.

Ms. TSONGAS. Federal regulations require the BCMRs and DRBs to make all their decisions publicly available. Moreover, decisions are required to be indexed "in a usable and concise form so as to enable the public to identify those cases similar in issue together with the circumstances under and/or reasons for which the board and/or Secretary have granted or denied relief." In this way, applicants and their lawyers should be able to search for cases to determine applicable standards and present their arguments accordingly. However, in reality, the reading rooms are very basic, consisting of a list of case numbers. Except for the Coast Guard, which has a bare-bones indexing system, none of the services indexes its cases at all.

a. What constraints prevent the boards from indexing and summarizing case decisions? b. Why do each of the services use different computer systems for maintaining its records? Why wouldn't it be more efficient and cost effective to consolidate data systems?

Mr. TESKEY. a. What constraints prevent the boards from indexing and summarizing case decisions? Under our most-recently archived AFRBA Case Management system (CMTS), a rudimentary ad-hoc index of case types and applicant issues was accomplished internal to the AF Review Board Agency as necessary. This index did not feed any data management or reporting capabilities. Further, an index capability on the reading room did not exist; the indexing was cost/labor prohibitive; and it was determined that it provided no added value at the time. The capability was set aside as the agency selected a new case management system (CMTARS). The system does allow for a level of tracking commensurate with congressional reporting requirements for specific issues which could potentially be leveraged into a meaningful index. This would require significant increases in manpower specifically for this purpose and also require funding for technological upgrades to reading room capabilities. As the Reading Room site is maintained by the Army, we would work with the Army to explore a more automated means for doing this. A typical Google-like search function exists for the existing Army-hosted reading room.

b. Why do each of the services use different computer systems for maintaining its records? Why wouldn't it be more efficient and cost effective to consolidate data systems? All service BCMR/DRB reading rooms are hosted on the same website, which is maintained by the Army. We can work with DOD to design additional features to make it easier for applicants and their attorneys to search precedent cases. Data management systems are each procured under DOD rule sets to ensure the range of their needs are addressed. If a common data system were to be procured it would need to be directed and funded by DOD.

Ms. TSONGAS. Why are only two years of Physical Disability Board of Review decisions currently published in the Boards of Review Reading Room, and what kind of resources would be required to publish and index decisions going further back?

Mr. TESKEY. The PDBR was enacted as part of NDAA 2008 and began adjudicating cases in June 2009. PDBR decisions dating back to 2009 were previously published to the Boards of Review Reading Rooms. However, personally identifiable information was found on documents published to the reading room and all decisional documents from each board were removed from the reading rooms and returned to the originator for review to verify PII was removed prior to re-posting. The PDBR is currently in the process of reviewing previously posted decisions and posting as the reviews are completed. The PDBR currently has approximately 2,700 cases

pending review. The PDBR has requested reserve augmentation to assist with an increased workload and plans to task the additional personnel with completion of the reading room review immediately upon arrival. Of note, this issue is not exclusive to the PBDR. The AFDRB has experienced similar PII issues and has approximately 2500+ cases to review/redact from years preceding 2013.

